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

DEPARTMENT OF ENERGY

10 CFR Part 440

RIN 1904–AC16

Weatherization Assistance for Low-Income Persons: Maintaining the Privacy of Applicants for and Recipients of Services

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

ACTION: Interim final rule.

SUMMARY: The U.S. Department of Energy (DOE) is amending its regulations to require all States and other service providers that participate in the Weatherization Assistance Program (WAP) to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6).

DATES: *Effective Date:* This interim final rule is effective March 11, 2010 through December 6, 2010.

Comment Due Date: Comments on this interim final rule must be postmarked by no later than April 12, 2010.

ADDRESSES: Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Privacy-FR-2010-WAP@hq.doe.gov.* Include RIN 1901–AC16 in the subject line of the message.
- *Postal Mail:* Robert Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE–2K, 950 L'Enfant Plaza, SW., Room P201D, Washington, DC 20585–0121. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Robert Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE–2K, 950 L'Enfant Plaza, SW., Room P201D, Washington, DC 20585–0121. Please submit one signed original paper copy.

The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

Robert Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE–2K, 950 L'Enfant Plaza, SW., Room P201D, Washington, DC 20585–0121, (202) 287–1591, e-mail: *robert.adams@ee.doe.gov.*

Bryan Miller, Esq., U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8627.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Title IV, Energy Conservation and Production Act, as amended, authorizes DOE to administer the WAP. All grant awards made under this Program shall comply with applicable authorities, including regulations contained in Title 10 of the Code of Federal Register (10 CFR) Part 440.

II. Discussion

This rule applies to States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors (hereinafter "service providers"). DOE does not collect or maintain personal information regarding individuals applying for or receiving assistance under the WAP. Generally, DOE provides funding to States, which in turn provide funding to entities that manage weatherization projects ("weatherization service providers"), which, in turn, collect applicant information and make financial assistance awards to eligible applicants. The records collected by States and weatherization service providers in the course of administering the WAP are not Federal records for the purposes of applicable Federal law; however, DOE recognizes that a strong imperative exists to safeguard the privacy interests of individuals who participate in the programs that it administers. Therefore, the Department has concluded that it is prudent to provide formal standards for States and other service providers in responding to requests for personal information.

States receiving funds under the WAP have received requests for information regarding the implementation of programs funded through the American Recovery and Reinvestment Act. The information requests range from informal inquiries by local elected officials and other community leaders to requests for specific information about applicants and/or recipients from local and regional press outlets. Due, in part, to the increased levels of funding for the WAP—$5 billion over three years—we anticipate that there will be a number of similar such requests. DOE adheres to the transparency requirements placed on WAP and other government financial assistance programs instituted by the Administration and encourages the dissemination of information that provides insight into the government's use of WAP funding. FOIA clearly requires DOE to apply the Exemption (b)(6) balancing test to DOE records containing the personal information of individuals. Therefore, DOE hereby extends this requirement to States and other service providers that participate in the WAP to protect sensitive personal information in a manner consistent with DOE's obligations under the FOIA. DOE is committed to protecting the privacy of individuals who apply for or receive WAP funding.

By this interim final rule, DOE is requiring all States and other service providers under the WAP to apply the same balancing test set forth under FOIA Exemption (b)(6), 5 U.S.C. 552(b)(6), to WAP related information in the possession of the States and service providers that DOE would apply in considering the release of similar information. Thus, this minimum privacy protection applicable to

requests for WAP related information ensures that any request for such information must be analyzed using the same paradigm as a FOIA analysis in order to determine whether to release the information.

Given a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals. For example, information on the number of recipients in a county, city, or a zip code does not compromise the privacy of the WAP recipients. A State or other service provider may therefore disclose such aggregated information. However, the release of any information that personally identifies an individual or is linked or linkable to a specific individual must be carefully scrutinized using the principles of Exemption (b)(6).

Pursuant to FOIA Exemption (b)(6), records that contain personal information including but not limited to, names, addresses, and income information, are generally exempt from disclosure. Exemption (b)(6) is generally referred to as the "personal privacy" exemption; it provides that the disclosure requirements of FOIA do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

In applying Exemption (b)(6), courts apply a balancing test in order to determine: (1) Whether a significant privacy interest would be invaded; (2) whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and (3) whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy. A request for personal information including but not limited to the names, addresses, or income information of WAP applicants or recipients would require the State or other service provider to balance a clearly defined public interest in obtaining this information against the individuals' legitimate expectation of privacy.

Individuals have a strong privacy interest in protecting personal information including names, addresses, and financial information such as income levels or ranges, receipt of Government assistance, or any personal information likely to cause the individual involved personal distress or embarrassment. Absent a compelling public interest in disclosure, including the unavailability of less intrusive means of obtaining the information, the balancing test will generally favor the personal privacy interests of the individual. The burden of persuasion is on the requester claiming the public interest. Such assertions of public interest are closely scrutinized by courts to ensure that they legitimately warrant overriding important privacy interests and that a nexus exists between the information at issue and the public interest.

In applying the principles of a FOIA analysis to requests for this type of information in the possession of States and other service providers, DOE, is, by this rule, requiring all States and other service providers under the WAP to apply the balancing test of Exemption (b)(6) to WAP related records in their possession, custody, or control. DOE is extending its expertise in carrying out Exemption (b)(6) FOIA analyses and States and service providers are encouraged to contact DOE's Office of the Assistant General Counsel for General Law, (202) 586–1522, for assistance in applying the balancing test to requests for information.

III. Request for Comment

DOE seeks comment on this interim final rule. In addition, DOE requests public comment as to whether it should consider extending any other aspects of the FOIA to information collected and maintained by States and their subawardees in their administration of the WAP.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action is a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The Department of Energy finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on these regulations pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effect date pursuant to 5 U.S.C. 553(d). Notice and comment procedures on this rule are impracticable and contrary to the public interest. DOE is aware of at least one currently pending instance of a request seeking personal information of WAP participants in the possession of a State. Participation in WAP is limited to low-income individuals. DOE is of the opinion that if such information is released, these families would likely be subjected to harassment, discrimination, embarrassment, predatory lending, and other forms of economic and social harm. Disclosure of this information would be comparable to releasing a person's status as a food-stamp or welfare recipient—information that the Federal government keeps strictly confidential.

DOE is also of the opinion that release of information such as the names, private income and address information of WAP participants will have a serious chilling effect on an individual's willingness to participate in the WAP, which would frustrate the program's purpose. Providing prior notice and an opportunity for public comment on this rule may result in the release of the information in the possession of the State thereby resulting in the very harm that DOE seeks to avoid.

There is good cause to waive the required 30-day delay in effect for these same reasons. Therefore, these regulations are effective March 11, 2010 through December 6, 2010.

However, while not required, DOE is interested in receiving public comment on this rulemaking after its effective date. As such, this rule is being published on an interim final basis.

DOE intends to issue a final rule in this proceeding prior to the expiration of this interim final rule on December 6, 2010, in which it will respond to comments received.

C. National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment, unless the agency certifies that the rule will have no significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461

(August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.energy.gov.* Because a notice of proposed rulemaking is not required under the Administrative Procedure Act or other applicable law, the Regulatory Flexibility Act does not require certification or the conduct of a regulatory flexibility analysis for this rule.

E. Paperwork Reduction Act

This rulemaking imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's interim final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

H. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. DOE has examined this interim final rule and determined that it would not preempt State law and would have no 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. Executive Order 13132 requires no further action.

I. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation an interim final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant

energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

M. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice and the Federal Trade Commission concerning the impact of the commercial or industry standards on competition. This interim final rule does not authorize or require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards—Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on February 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, DOE is amending Part 440 of chapter II of title 10, Code of Federal Regulations, as set forth below:

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

■ 1. The authority citation for Part 440 continues to read as follows:

Authority: 42 U.S.C. 6861 *et seq.;* 42 U.S.C. 7101 *et seq.*

■ 2. Section 440.2 is amended by adding a new paragraph (e) to read as follows:

§ 440.2 Administration of grants.

* * * * *

(e)(1) States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors that participate in the program established under this Part are required to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6). Under 5 U.S.C. 552(b)(6), information relating to an individual's eligibility application or the individual's participation in the program, such as name, address, or income information, are generally exempt from disclosure.

(2) A balancing test must be used in applying Exemption (b)(6) in order to determine:

(i) Whether a significant privacy interest would be invaded;

(ii) Whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and

(iii) Whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

(3) A request for personal information including but not limited to the names, addresses, or income information of WAP applicants or recipients would require the State or other service provider to balance a clearly defined public interest in obtaining this information against the individuals' legitimate expectation of privacy.

(4) Given a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals. However, a State or service provider must apply an FOIA Exemption (b)(6) balancing test to any request for information that can not be satisfied by such less-intrusive methods.

[FR Doc. 2010–5195 Filed 3–10–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD; Amendment 39–16056; AD 2009–22–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This 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:

There have been several cases of wing leading edge anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Upon investigation, it was determined that ducts manufactured since May 2000 are susceptible to cracking due to the process used to drill holes in the ducts. This cracking may cause air leakage, with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability, without annunciation to the flight crew [and consequent reduced controllability of the airplane].

* * * * *

It has subsequently been determined that faulty ducts may also have been installed in a number of leading edge assemblies built as spares and whose current locations are not specifically known. * * *

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 15, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2010.

On December 1, 2008 (73 FR 67363, November 14, 2008), the Director of the Federal Register previously approved the incorporation by reference of certain publications listed in this AD.

On September 7, 2005 (70 FR 49164, August 23, 2005), the Director of the Federal Register previously approved the incorporation by reference of certain other publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, 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) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 24, 2009 (74 FR 36628), and proposed to supersede AD 2008–23–16, Amendment 39–15737 (73 FR 67363, November 14, 2008). That NPRM proposed to correct an unsafe condition for the specified products.

The preamble to AD 2008–23–16 explains that we consider those requirements "interim action" and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary to require the previously optional terminating action, and this AD follows from that determination. Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, previously issued Canadian Airworthiness Directive CF–2008–30, dated October 7, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products.

The unsafe condition is cracked piccolo ducts, which could result in air leakage, a possible adverse effect on the anti-ice distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane. Required actions include revising the airplane flight manual, inspecting to determine if certain anti-ice piccolo ducts are installed, and replacing or repairing the piccolo duct if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Changes Made to the AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

We have revised paragraph (j)(5) of this AD to remove reference to Master Minimum Equipment List (MMEL) Entry 30–12–03. However, we have approved operation of the airplane according to MMEL Entry 30–12–03 as a method for complying with the requirements of paragraph (j)(5) of this AD. Operators may contact the Manager, New York ACO, ANE–170, for information regarding the use of MMEL Entry 30–12–03 for compliance with the requirements of paragraph (j)(5) of this AD. We have included a new Note 1 in this AD to specify that guidance on operating the airplane under certain conditions according to the MMEL can be found in MMEL Entry 30–12–03, and have renumbered subsequent notes accordingly.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect about 711 products of U.S. registry.

The actions that are required by AD 2008–23–16 and retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $181,305, or $255 per product.

We estimate that it will take about 12 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will 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. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $725,220, or $1,020 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 39–15737 (73 FR 67363, November 14, 2008) and adding the following new AD:

2009–22–05 Bombardier, Inc.: Amendment 39–16056. Docket No. FAA–2009–0656; Directorate Identifier 2009–NM–038–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 15, 2010.

Affected ADs

(b) This AD supersedes AD 2008–23–16, Amendment 39–15737.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; serial numbers (S/Ns) 7003 through 7067 inclusive, 7069 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096, and 8097.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and rain protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''There have been several cases of wing leading edge anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Upon investigation, it was determined that ducts manufactured since May 2000 are susceptible to cracking due to the process used to drill holes in the ducts. This cracking may cause air leakage, with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability, without annunciation to the flight crew [and consequent reduced controllability of the airplane].

The faulty ducts were installed on aircraft SN 7417 through 7990 and 8000 through 8055 in production, and as replacement parts on in service aircraft SN 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378 and 7381. Service Bulletin (SB) 601R–30–029, Revision B and AD CF–2005–26R1 previously covered the above aircraft serial numbers.

It has subsequently been determined that faulty ducts may also have been installed in a number of leading edge assemblies built as spares and whose current locations are not specifically known. As they may have been installed on any of the aircraft serial numbers in the Applicability section of this directive, checking of records and/or inspection * * * is now required for all applicable aircraft.

"This directive, which supersedes and cancels AD CF–2005–26R1 [which corresponds to FAA AD 2005–17–12, amendment 39–14223], mandates the amendment of the Airplane Flight Manual (AFM) procedures, in addition to checking the part numbers and serial numbers of installed and spare wing anti-ice piccolo ducts, as required, and inspecting, replacing or repairing them as necessary. Terminating action is also introduced."

Required actions include revising the airplane flight manual, inspecting to determine if certain anti-ice piccolo ducts are installed, and replacing or repairing the piccolo duct if necessary.

Restatement of Requirements of AD 2005–17–12

Identification of Affected Piccolo Tubes

(f) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: Before the airplane accumulates 3,000 total flight hours, or within 14 days after September 7, 2005 (the effective date of AD 2005–17–12, which was superseded by AD 2008–23–16), whichever occurs later, determine whether any affected piccolo tube is installed on the airplane. Affected piccolo tubes are identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. Doing the action required by paragraph (p), (q), (r), (w), or (y) of this AD terminates the requirements of this paragraph.

Revision to Airplane Flight Manual (AFM)

(g) Unless already done, for airplanes with an affected or unidentifiable piccolo tube found during the action required by paragraph (f) of this AD: Before the airplane accumulates 3,000 total flight hours, or within 14 days after September 7, 2005, whichever occurs later, revise the Operating Limitations and Abnormal Procedures sections of the Canadair Regional Jet AFM, CSP A–012, to include the information in Canadair Temporary Revision (TR) RJ/155, dated July 5, 2005, as specified in the TR. This may be done by inserting a copy of the TR into the AFM. This TR introduces new procedures for operation in icing conditions. Operate the airplane according to the limitations and procedures in the TR except as required by paragraph (n) of this AD. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the TR. After the AFM revision required by paragraph (n) of this AD has been done, remove the AFM limitation specified in this paragraph.

Optional Inspections

(h) Unless already done, for airplanes with an affected or unidentifiable piccolo tube found during the action required by paragraph (f) of this AD: The operating limitations and abnormal procedures specified in Canadair TR RJ/155, dated July 5, 2005, as required by paragraph (g) of this AD, may be removed from the AFM, provided all requirements of this paragraph have been satisfied.

(1) A fluorescent dye penetrant inspection for cracks of the piccolo tubes is done and repeated thereafter within 2,000-flight-hour intervals in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. An inspection done before September 7, 2005, in accordance with Bombardier Service Bulletin 601R–30–029, dated June 17, 2005, is acceptable for compliance with the requirements of paragraph (h)(1) of this AD. Doing the inspection required by paragraph (u) of this AD terminates the actions required by this paragraph.

(2) All applicable corrective actions are done as specified in paragraph (j) of this AD.

AFM Limitations Required for Exceeding Inspection Interval

(i) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362,

7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: During any period in which the inspection interval exceeds 2,000 flight hours after the initial inspection specified in paragraph (h)(1) of this AD, the airplane must be operated under the limitations and abnormal procedures specified in paragraph (g) of this AD. Doing the action required by paragraph (p), (q), (r), (w), or (y) of this AD terminates the requirements of this paragraph.

Corrective Action

(j) Unless already done, if any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, do the actions specified in paragraph (j)(1), (j)(2), (j)(3), (j)(4), or (j)(5) of this AD, except as required by paragraph (k) of this AD.

(1) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a new piccolo tube that has the same part number as identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, but that does not have a serial number listed in that paragraph.

(2) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a new piccolo tube that has a part number identified in the applicable Bombardier illustrated parts catalog but not identified in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, or with a new piccolo tube identified in paragraph (l) of this AD.

(3) Replace the cracked piccolo tube, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, with a piccolo tube that has been inspected in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, is not cracked, and has not accumulated any air time (hours time-in-service) since inspection.

(4) Replace the cracked piccolo tube with a piccolo tube that has been repaired in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE–172, FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); and has not accumulated any air time (hours time-in-service) since the repair.

(5) Reinstall the cracked piccolo tube and operate the airplane in accordance with a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent).

Note 1: Guidance on operating the airplane under certain conditions in accordance with the provisions of the Master Minimum Equipment List (MMEL) can be found in MMEL Entry 30–12–03.

Exception to Service Bulletin Procedures

(k) *Unless already done:* Where Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, specifies that Bombardier may be contacted for information regarding repair, this AD requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent).

Optional Terminating Action for Paragraphs (f), (g), (h), (i), and (j)

(l) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: Installation, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, of a complete set of new inboard, center, and outboard piccolo tubes, as identified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, terminates the requirements of paragraphs (f), (g), (h), (i), and (j) of this AD. When these piccolo tubes have been installed, remove the Operating Limitations and Abnormal Procedures, if inserted in accordance with paragraph (g) of this AD, from the AFM.

(1) For the inboard piccolo tube: Part numbers (P/N) 601–80032–7 (14432–107) and 601–80032–8 (14432–108).

(2) For the center piccolo tube: P/N 14464–105 and 14464–106.

(3) For the outboard piccolo tube: P/N 14463–109 and 14463–110.

Parts Installation

(m) Unless already done, for airplanes having S/Ns 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 through 8076 inclusive, 8082, 8086, 8090 through 8092 inclusive, 8096 and 8097: As of September 7, 2005, no person may install, on any airplane, a piccolo tube having a P/N listed in paragraph 1.A. of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, unless the applicable requirements of paragraphs (f) through (l) of this AD have been accomplished for that piccolo tube before the effective date of this AD or the requirements specified in paragraph (v) of this AD have been accomplished. As of December 1, 2008 (the effective date of AD 2008–23–16), the requirements of paragraph (v) of this AD must be followed.

Restatement of Requirements of AD 2008–23–16

Revision to AFM

(n) *Unless already done:* For all airplanes, within 14 days after December 1, 2008, revise the Operating Limitations and Abnormal Procedures sections of the Canadair Regional Jet AFM, CSP A–012, to include the information in Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, as specified in that TR. This may be done by inserting a copy of Canadair (Bombardier) TR RJ/155–6 into the AFM. This TR introduces new procedures for operation in icing conditions. After the AFM revision specified in this paragraph has been done, the AFM limitation required by paragraph (g) of this AD must be removed from the AFM.

Note 2: When Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Canadair (Bombardier) TR RJ/155–6.

(o) Unless already done: Before further flight after accomplishing paragraph (n) of this AD, operate the airplane according to the limitations and procedures in Canadair (Bombardier) TR RJ/155–6, dated September 17, 2008, except that MMEL Entry 30–12–03, which permits the wing anti-ice system to be inoperative with specific provisions, is not affected by this AD.

Records Check

(p) Unless already done, for airplanes having S/Ns 7003 through 7013 inclusive, 7015, 7016, 7018 through 7036 inclusive, 7038 through 7045 inclusive, 7047 through 7058 inclusive, 7060 through 7067 inclusive, 7069 through 7075 inclusive, 7077 through 7104 inclusive, 7106 through 7126 inclusive, 7128 through 7150 inclusive, 7152 through 7156 inclusive, 7158 through 7162 inclusive, 7164 through 7178 inclusive, 7180 through 7202 inclusive, 7204 through 7227 inclusive, 7229 through 7270 inclusive, 7272 through 7346 inclusive, 7348 through 7358 inclusive, 7360, 7361, 7363 through 7377 inclusive, 7379, 7380, 7382 through 7416 inclusive, 8056 through 8076 inclusive, 8082, 8086, 8090 though 8092 inclusive, 8096 and 8097: Within 30 days after December 1, 2008, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections have been replaced since May 1, 2000. Doing the review in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) If no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, no further action is required by this paragraph.

(2) If any anti-ice piccolo duct or complete leading edge section has been replaced since May 1, 2000, or if it cannot be conclusively determined that no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, before further flight, inspect the serial numbers of the replaced ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review.

(i) If none of the piccolo duct serial numbers match any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(ii) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18,

2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

(q) Unless already done, for airplanes having S/Ns 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378, 7381, 7417 through 7990 inclusive, and 8000 through 8055 inclusive, on which Bombardier Service Bulletin 601R–30–029 has been accomplished: Within 30 days after December 1, 2008, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections have been replaced since accomplishing Bombardier Service Bulletin 601R–30–029. Doing the action in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) If no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, no further action is required by this paragraph.

(2) If any anti-ice piccolo duct or complete leading edge section has been replaced since May 1, 2000, or if it cannot be conclusively determined that no anti-ice piccolo ducts and no complete leading edge sections have been replaced since May 1, 2000, before further flight, inspect the serial numbers of the replaced ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review.

(i) If none of the piccolo duct serial numbers match any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(ii) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

(r) Unless already done, for airplanes having S/Ns 7014, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7179, 7203, 7228, 7271, 7347, 7359, 7362, 7378, 7381, 7417 through 7990 inclusive, and 8000 through 8055 inclusive, on which Bombardier Service Bulletin 601R–30–029 has not been accomplished: Within 30 days after December 1, 2008, inspect the serial numbers of the piccolo ducts. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review. Doing the inspection in this paragraph terminates the requirements of paragraphs (f) and (i) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) If none of the piccolo duct serial numbers match any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, no further action is required by this paragraph.

(2) If any of the piccolo duct serial numbers matches any of those in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, or if the serial number cannot be determined, do the actions required by paragraph (s) of this AD.

Inspection of the Wing Anti-Ice Piccolo Ducts

(s) Unless already done, for airplanes having a piccolo duct identified in paragraph (p)(2)(ii), (q)(2)(ii), or (r)(2) of this AD: Within 30 days after doing the action specified in paragraph (p), (q), or (r) of this AD, as applicable, do a fluorescent dye penetrant inspection for cracking of the piccolo ducts, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 2,000 flight hours. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(t) *Unless already done:* If any cracking is found during any inspection required by paragraph (s) of this AD, before further flight, do the actions specified in paragraph (t)(1), (t)(2), or (t)(3) of this AD, except where Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, specifies to contact Bombardier for information regarding repair, this AD requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent). Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

(1) Replace the cracked piccolo duct, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with a new piccolo duct that has the same part number as identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, but that does not have a serial number listed in that paragraph.

(2) Replace the cracked piccolo duct, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with a new piccolo duct that has a part number identified in the applicable Bombardier illustrated parts catalog but not identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008.

(3) Replace the cracked piccolo duct with a piccolo duct that has been repaired in accordance with a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent).

Repetitive Inspection of the Wing Anti-Ice Piccolo Ducts

(u) Unless already done, for airplanes on which an inspection required by paragraph (h)(1) of this AD has been done, except for airplanes on which the terminating action specified in paragraph (l) of this AD has been done: Within 2,000 flight hours since the last inspection, or 30 days after December 1, 2008, whichever occurs later, do the actions specified in paragraph (s) of this AD. Doing the inspection required by this paragraph terminates the actions required by paragraph (h)(1) of this AD. Doing the action specified in paragraph (w) or (y) of this AD terminates the requirements of this paragraph.

Parts Installation Paragraph

(v) *Unless already done:* As of December 1, 2008, the requirements specified in paragraphs (v)(1) and (v)(2) of this AD must be followed.

(1) For airplanes on which the terminating action specified in paragraph (w) of this AD had not been done as of December 1, 2008: No person may install a piccolo duct having a part number identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, on any airplane, unless the requirements specified in paragraphs (s) and (t) of this AD, as applicable, have been accomplished for that piccolo duct.

(2) For airplanes on which the terminating action specified in paragraph (w) of this AD had been done as of December 1, 2008: No person may install a piccolo duct having a part number identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, on any airplane.

Optional Terminating Action

(w) Replacing all piccolo ducts that have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with piccolo ducts that do not have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, terminates the requirements of paragraphs (f), (h), (i), (p), (q), (r), (s), (t), and (u) of this AD.

Optional Service Information for Certain Requirements of This AD

(x) Actions accomplished according to Bombardier Service Bulletin 601R–30–029, Revision B, dated August 29, 2005; or Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008; are considered acceptable for compliance with the corresponding actions specified in paragraphs (h)(1), (j)(1), (j)(2), (j)(3), and (l) of this AD.

New Requirements of This AD: Actions and Compliance

Terminating Action

(y) *Unless already done, do the following actions:* Within 24 months after the effective date of this AD, replace all piccolo ducts that have serial numbers identified in Part A,

Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, with piccolo ducts that do not have serial numbers identified in Part A, Paragraph 2.A., of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–30–032, dated September 18, 2008. Replacing all the piccolo ducts in accordance with this paragraph terminates the requirements of paragraphs (f), (h), (i), (p), (q), (r), (s), (t), and (u) of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(z) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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.

(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

(aa) Refer to MCAI Canadian Airworthiness Directive CF–2008–30, dated October 7, 2008, and the service information identified in Table 1 of this AD, for related information.

TABLE 1—RELATED SERVICE INFORMATION

Service information	Revision level	Date
Bombardier Alert Service Bulletin A601R–30–032, including Appendix A and Appendix B	Original	September 18, 2008.
Bombardier Service Bulletin 601R–30–029, including Appendices A and B, dated June 17, 2005.	Original	June 17, 2005.
Bombardier Service Bulletin 601R–30–029, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.	A	July 7, 2005.
Bombardier Service Bulletin 601R–30–029, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.	B	August 29, 2005.
Canadair (Bombardier) Temporary Revision RJ/155–6 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.	Original	September 17, 2008.
Canadair Temporary Revision RJ/155 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.	Original	July 5, 2005.

Material Incorporated by Reference

(bb) You must use the service information contained in Table 2 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use the service information contained in Table 3 of this AD, as applicable, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE FOR REQUIRED ACTIONS

Service information	Revision level	Date
Bombardier Alert Service Bulletin A601R–30–032, including Appendix A and Appendix B	Original	September 18, 2008.
Bombardier Service Bulletin 601R–30–029, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.	A	July 7, 2005.
Canadair (Bombardier) Temporary Revision RJ/155–6 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.	Original	September 17, 2008.
Canadair Temporary Revision RJ/155 to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.	Original	July 5, 2005.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE FOR OPTIONAL ACTIONS

Service information	Revision level	Date
Bombardier Alert Service Bulletin A601R–30–032, including Appendix A and Appendix B	Original	September 18, 2008.
Bombardier Service Bulletin 601R–30–029, including Appendices A and B, dated June 17, 2005.	Original	June 17, 2005.
Bombardier Service Bulletin 601R–30–029, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.	A	July 7, 2005.
Bombardier Service Bulletin 601R–30–029, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.	B	August 29, 2005.

(1) The Director of the Federal Register approved Bombardier Service Bulletin 601R–30–029, dated June 17, 2005, including Appendices A and B, dated June 17, 2005; and Bombardier Service Bulletin 601R–30–029, Revision B, dated August 29, 2005, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005; under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On December 1, 2008 (73 FR 67363, November 14, 2008), the Director of the

Federal Register previously approved the incorporation by reference of Bombardier Alert Service Bulletin A601R–30–032, including Appendix A and Appendix B, dated September 18, 2008; and Canadair (Bombardier) Temporary Revision RJ/155–6, dated September 17, 2008, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012.

(3) On September 7, 2005 (70 FR 49164, August 23, 2005), the Director of the Federal Register previously approved the incorporation by reference of Canadair Temporary Revision RJ/155, dated July 5, 2005, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012; and Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005.

(4) For service information identified in this 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.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(5) You may review copies of the 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.

(6) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 19, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5011 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0789; Directorate Identifier 2008–NM–185–AD; Amendment 39–16228; AD 2010–06–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–103, B4–203, B4–2C Airplanes; Model A310 Series Airplanes; and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

Cracks have been found on pylon side panels (upper section) at rib 8 on Airbus A300, A310 and A300–600 aircraft equipped with General Electric engines. Investigation of these findings indicates that this problem is likely to affect aircraft of this type design with other engine installations. This condition, if not corrected, can lead to reduced strength [structural integrity] of the pylon primary structure.

* * * * *

The unsafe condition is reduced structural integrity of the pylon primary structure, which could cause detachment of the engine from the fuselage. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 15, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 21, 2009 (74 FR 48024). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Cracks have been found on pylon side panels (upper section) at rib 8 on Airbus A300, A310 and A300–600 aircraft equipped with General Electric engines. Investigation of these findings indicates that this problem is likely to affect aircraft of this type design with other engine installations. This condition, if not corrected, can lead to reduced strength [structural integrity] of the pylon primary structure.

In order to detect any crack propagation at an early stage, thus avoiding an extensive repair, Airbus issued Service Bulletins (SB) A300–54–0075, A310–54–2018 and A300–54–6015. * * *

This AD requires the implementation of this * * * inspection programme.

The unsafe condition is reduced structural integrity of the pylon primary structure, which could cause detachment of the engine from the fuselage. Required actions include repetitive detailed visual inspections, or repetitive eddy current and detailed visual inspections, to detect cracks, depending on the airplane configuration, and corrective actions if necessary. The corrective actions include repairing the cracking, and contacting Airbus for repair instructions and doing the repair, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Clarify Reporting Requirement

American Airlines requests that we remove the requirement for reporting findings to Airbus. The commenter states that Appendix 1, 2, and 3 in Airbus Service Bulletin A300–54–6015 require findings to be reported; however, the proposed rule specifically excludes Appendix 1, 2, and 3 in Table 2 of this AD. American Airlines states the difference is not addressed in the proposed rule. The commenter also states that reporting findings within a specified time period has no effect on improving safety and should not be mandated by the proposed rule.

We agree that reporting inspection findings to Airbus is not necessary in this AD for the reasons stated by the commenter. Since the MCAI requires reporting inspection findings to Airbus and it is not our intent to require those reports, we have added Note 2 in this AD to clarify that this AD does not include a reporting requirement.

Request To Refer to Paragraph 3.B. in Airbus Mandatory Service Bulletin A300–54–6015, Revision 02, Dated June 26, 2008, for Inspection Task

The commenter, R. L. Vernon, requests that paragraph (f)(1) of the NPRM refer to paragraph 3.B. of Airbus Mandatory Service Bulletin A300–54–6015, Revision 02, dated June 26, 2008, rather than paragraph 3.E., for the inspection task. The commenter states

that paragraph 3.E. incorrectly calls for the access panels to be removed, rather than installed.

We concur with the request to refer to paragraph 3.B of Airbus Mandatory Service Bulletin A300–54–6015, Revision 02, dated June 26, 2008. It appears there is a typographical error in paragraph 3.E. of Airbus Mandatory Service Bulletin A300–54–6015, Revision 02, dated June 26, 2008, which instructs operators to remove access panels rather than to install access panels. We have revised paragraph (f) of this AD to refer to the specific section of the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–54–6015, Revision 02, dated June 26, 2008, for that action. We have also revised paragraphs (f)(4) and (f)(7) of this AD to refer to paragraph 3.C. rather than paragraph 3.B. of the Accomplishment Instructions.

Request To Extend Grace Period

FedEx requests that the grace period for the inspection to detect cracking be extended from 250 flight cycles to 350 flight cycles. FedEx states the inspection threshold/grace periods do not fit into their planned scheduled maintenance checks. FedEx states that 61 of 95 affected airplanes have exceeded the AD compliance threshold, and thus will be subject to the grace period of 250 flight cycles. FedEx states that the grace period of 250 flight cycles does not allow all airplanes to be inspected at a B-check (every 500 flight hours), thereby requiring the airplanes to be inspected at a special visit.

We do not agree with the request to extend the grace period. An extension to the grace period cannot be provided easily and depends on the airplane and structure configuration, as well as the number of flight cycles and flight hours accumulated from repair embodiment or from first flight. Under the provisions of paragraph (g)(1) of the final rule, we will consider requests for approval of an extension of the grace period if sufficient data are submitted to substantiate that the new grace period would provide an acceptable level of safety. We have not changed the AD in this regard.

Request for Clarification of Table 1 of the NPRM

FedEx requests that the compliance times listed in Table 1 of the NPRM be written more clearly. FedEx states that the 18,000-flight-cycle criterion appears to be arbitrary and adds confusion for the reader. FedEx provides an example that excludes the criterion of 18,000 flight cycles.

We disagree with the request to change Table 1 of the NPRM. The thresholds specified in the second column of that table were derived from the note in the Configuration 01 table in paragraph 1.E.(2) of Airbus Service Bulletin A300–54–6015, Revision 02, dated June 26, 2008. The note states that the inspection is to be done within 2,000 flight cycles without exceeding 20,000 total flight cycles/40,000 total flight hours from first flight. The compliance times specified in Table 1 of this AD reflect the intent of Airbus Mandatory Service Bulletin A300–54–6015, Revision 02, dated June 26, 2008. We have not changed the AD in this regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change of Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 230 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $78,200, or $340 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2010–06–04 Airbus: Amendment 39–16228. Docket No. FAA–2009–0789; Directorate Identifier 2008–NM–185–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300 B4–103, A300 B4–203, and A300 B4–2C airplanes, all serial numbers incorporating Airbus Modification 02434 or 03599;

(2) Airbus Model A310–203, A310–204, A310–221, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes, all serial numbers, except airplanes incorporating Airbus Modification 10432;

(3) Airbus Model A300 B4–601, A300 B4–603, A300 B4–605R, A300 B4–620, A300 B4–622, and A300 B4–622R airplanes, all serial numbers, except airplanes incorporating Airbus Modification 10432.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

"Cracks have been found on pylon side panels (upper section) at rib 8 on Airbus A300, A310 and A300–600 aircraft equipped with General Electric engines. Investigation of these findings indicates that this problem is likely to affect aircraft of this type design with other engine installations. This condition, if not corrected, can lead to reduced strength [structural integrity] of the pylon primary structure.

"In order to detect any crack propagation at an early stage, thus avoiding an extensive repair, Airbus issued Service Bulletins (SB) A300–54–0075, A310–54–2018 and A300–54–6015. * * *

"This AD requires the implementation of this * * * inspection programme."

The unsafe condition is reduced structural integrity of the pylon primary structure, which could cause detachment of the engine from the fuselage. Required actions include repetitive detailed visual inspections, or repetitive eddy current and detailed visual inspections, to detect cracks, depending on the airplane configuration, and corrective actions if necessary. The corrective actions include repairing the cracking, and contacting Airbus for repair instructions and doing the repair, as applicable.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) For Configuration 01 airplanes as identified in the applicable service bulletin identified in Table 2 of this AD: At the applicable time specified in Table 1 of this AD, except as required by paragraphs (f)(2) and (f)(3) of this AD, perform a detailed visual inspection of the pylons 1 and 2 side panels (upper section) at rib 8, in accordance with paragraph 3.B. of the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD. Repeat the inspection at the time specified in Table 1 of this AD.

TABLE 1—COMPLIANCE TIMES FOR CONFIGURATION 1

For model—	That have accumulated—	Whichever occurs later		And repeat the inspection at intervals not to exceed—
		Inspect before the accumulation of—	Or within—	
A300 B2–1C, B2–203, and B2K–3C airplanes.	≤17,500 total flight cycles.[1] ..	5,350 total flight cycles	2,500 flight cycles.[2]	4,300 flight cycles.
A300 B2–1C, B2–203, and B2K–3C airplanes.	>17,500 total flight.[1]	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles.[2]	4,300 flight cycles.
A300 B4–103, B4–203, and B4–2C airplanes.	≤18,000 total flight cycles.[1] ..	5,350 total flight cycles	2,000 flight cycles.[2]	4,300 flight cycles.
A300 B4–103, B4–203, and B4–2C airplanes.	>18,000 total flight cycles.[1] ..	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles.[2]	4,300 flight cycles.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes.	≤18,000 total flight cycles.[1] ..	4,200 total flight cycles	2,000 flight cycles.[2]	3,600 flight cycles.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes.	>18,000 total flight cycles.[1] ..	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles.[2]	3,600 flight cycles.
A310–200 airplanes with GE CF6–80A3 or Pratt & Whitney engines.	≤18,000 total flight cycles.[1] ..	9,700 total flight cycles or 19,400 total flight hours, whichever occurs first.	1,500 flight cycles.[2]	6,700 flight cycles or 13,400 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80A3 or Pratt & Whitney engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	6,700 flight cycles or 13,400 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80C2 engines.	≤18,000 total flight cycles.[1] ..	7,800 total flight cycles or 15,600 total flight hours, whichever occurs first.	1,500 flight cycles.[2]	5,800 flight cycles or 11,600 flight hours, whichever occurs first.

TABLE 1—COMPLIANCE TIMES FOR CONFIGURATION 1—Continued

For model—	That have accumulated—	Whichever occurs later		And repeat the inspection at intervals not to exceed—
		Inspect before the accumulation of—	Or within—	
A310–200 airplanes with GE CF6–80C2 engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	5,800 flight cycles or 11,600 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with Pratt & Whitney JT9D engines.	≤18,000 total flight cycles.[1] ..	8,600 total flight cycles or 24,000 total flight hours, whichever occurs first.	1,500 total flight cycles.[2] ..	6,700 flight cycles or 18,700 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with Pratt & Whitney JT9D engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	6,700 flight cycles or 18,700 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with GE engines.	≤18,000 total flight cycles.[1] ..	7,000 total flight cycles or 19,600 total flight hours, whichever occurs first.	1,500 flight cycles.[2]	5,700 flight cycles or 15,900 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with GE engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	5,700 flight cycles or 15,900 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with Pratt & Whitney 4000 engines.	≤18,000 total flight cycles.[1] ..	7,000 total flight cycles or 19,600 total flight hours, whichever occurs first.	1,500 flight cycles.[2]	5,800 flight cycles or 16,200 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with Pratt & Whitney 4000 engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	5,800 flight cycles or 16,200 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney JT9D engines.	≤18,000 total flight cycles.[1] ..	5,900 total flight cycles or 29,500 total flight hours, whichever occurs first.	1,500 flight cycles.[2]	6,000 flight cycles or 30,300 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney JT9D engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	6,000 flight cycles or 30,300 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with GE engines.	≤18,000 total flight cycles.[1] ..	4,800 total flight cycles or 24,100 total flight hours, whichever occurs first.	1,500 flight cycles.[2]	5,100 flight cycles or 25,500 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with GE engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	5,100 flight cycles or 25,500 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney 4000 engines.	≤18,000 total flight cycles.[1] ..	4,800 total flight cycles or 24,000 total flight hours, whichever occurs first.	1,500 flight cycles.[2]	5,200 flight cycles or 26,300 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney 4000 engines.	>18,000 total flight cycles.[1] ..	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles.[2]	5,200 flight cycles or 26,300 flight hours, whichever occurs first.

[1] As of the effective date of this AD.
[2] After the effective date of this AD.
[3] "SR" applies to airplanes with average flights less than 4 flight hours.
[4] "LR" refers to airplanes with average flights of 4 or more flight hours.

(2) For Model A300 and A300–600 airplanes that have accumulated more than 40,000 total flight hours as of the effective date of this AD: Within 250 flight cycles after the effective date of this AD, do the actions specified in paragraph (f)(1) of this AD.

(3) For Model A310 airplanes that have accumulated more than 55,500 total flight hours as of the effective date of this AD: Within 250 flight cycles after the effective date of this AD, do the actions specified in paragraph (f)(1) of this AD.

(4) For Configuration 01 airplanes, as identified in the applicable service bulletin identified in Table 2 of this AD: If a crack is found during any inspection required by this AD, before further flight, install a doubler, in accordance with paragraph 3.C. of the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

(5) For Configuration 02 airplanes, as identified in the applicable service bulletin identified in Table 2 of this AD: At the applicable time specified in paragraph 1.E.(2) of the applicable service bulletin identified in Table 2 of this AD, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the pylons 1 and 2 side panels (upper section) at rib 8, in accordance with paragraph 3.B. of the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

(6) For Configuration 03 airplanes, as identified in the applicable service bulletin identified in Table 2 of this AD: At the applicable time specified in paragraph 1.E.(2) of the applicable service bulletin identified in Table 2 of this AD, or within 250 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection, and a high frequency eddy current inspection as applicable, of the pylons 1 and 2 side panels (upper section) at rib 8, in accordance with paragraph 3.B. of the Accomplishment Instructions of the

applicable service bulletin identified in Table 2 of this AD.

(7) For Configuration 02 and 03 airplanes, as identified in the applicable service bulletin identified in Table 2 of this AD: If a crack is found during any inspection required by paragraph (f)(1), (f)(5), or (f)(6) of this AD, before further flight, repair in accordance with paragraph 3.C. of the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD.

(8) For all airplanes, except those in Configuration 01, as identified in the applicable service bulletin identified in Table 2 of this AD: Repeat the inspection specified in paragraph (f)(1), (f)(5), or (f)(6) of this AD, as applicable, at the intervals specified in paragraph 1.E.(2) of the applicable service bulletin identified in Table 2 of this AD.

TABLE 2—SERVICE BULLETINS

For model—	Use Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300 B2–1C, B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes	A300–54–0075, excluding Appendices 1, 2, and 3	02	June 26, 2008.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes	A300–54–6015, excluding Appendices 1, 2, and 3	02	June 26, 2008.
A310 series airplanes	A310–54–2018, excluding Appendices 1, 2, and 3	02	June 26, 2008.

(9) Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with the service bulletins identified in Table 3 of this AD, as applicable, are acceptable for compliance with the corresponding requirements of this AD.

TABLE 3—PREVIOUS SERVICE INFORMATION

Service Bulletin—	Revision—	Dated—
Airbus Mandatory Service Bulletin A300–54–0075	01	November 9, 2007.
Airbus Mandatory Service Bulletin A300–54–6015	01	November 9, 2007.
Airbus Mandatory Service Bulletin A310–54–2018	01	November 16, 2007.
Airbus Service Bulletin A300–54–0075	Original	August 11, 1993.
Airbus Service Bulletin A300–54–6015	Original	August 11, 1993.
Airbus Service Bulletin A310–54–2018	Original	August 11, 1993.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Although the MCAI/service information allows further flight after cracks are found during compliance with certain actions, this AD requires that you repair the crack(s) before further flight.

(2) Although the MCAI specifies to send all inspection results to Airbus, this AD does not include that requirement.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate 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

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0181, dated October 1, 2008, and the applicable service bulletins identified in Table 2 of this AD, for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 4 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 4—SERVICE INFORMATION

Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300–54–0075, excluding Appendices 1, 2, and 3	02	June 26, 2008.
A300–54–6015, excluding Appendices 1, 2, and 3	02	June 26, 2008.
A310–54–2018, excluding Appendices 1, 2, and 3	02	June 26, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on March 4, 2010.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5162 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1176; Directorate Identifier 2009–CE–062–AD; Amendment 39–16226; AD 2010–06–02]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Model G58 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model G58 airplanes. This AD requires inspecting the installation of stand-off hardware between the heater fuel line and the heater over-temperature sensor wires and also brake reservoir tubing and the heater fuel pump wiring for minimum clearance and installing acceptable stand-off hardware if stand-off hardware is missing or inadequate. This AD results from reports received of a power wire shorting out on the brake reservoir tube. We are issuing this AD to detect and correct inadequate clearance of the brake reservoir tubing and the heater fuel pump wiring, which could result in chafing and shorting out of the electrical wiring and chafing of the tubing carrying flammable fluids. This condition could lead to a fire in the nose wheel well.

DATES: This AD becomes effective on April 15, 2010.

On April 15, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2009–1176; Directorate Identifier 2009–CE–062–AD.

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

SUPPLEMENTARY INFORMATION:

Discussion

On December 8, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Hawker Beechcraft Corporation Model G58 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 17, 2009 (74 FR 66930). The NPRM proposed to require inspecting the installation of stand-off hardware between the heater fuel line and the heater over-temperature sensor wires and also brake reservoir tubing and the heater fuel pump wiring for minimum clearance and installing acceptable stand-off hardware if stand-off hardware is missing or inadequate.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Effective Date

Mr. Busby states we should make the effective date of the AD immediate.

The FAA disagrees. We carefully reviewed the data for this safety concern to assess the risk level of this particular event. After reviewing the data, we compared this safety concern with similar safety concerns in the past. Then, we assigned a level of risk for this particular event equivalent to the level of risk assigned to the similar past safety concerns we used for comparison. With the information we have at this time, we set the time frame to comply with the actions for this AD similar to the time frame that was set for similar safety concerns that had equivalent risk levels. Without additional information to increase the risk level of this safety concern we have determined that the time frame set for complying with this safety concern is in line with past precedent.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Work-Hours

Mr. Busby states that the work-hours allotted to do the proposed inspection are not enough. We infer the commenter wants us to increase the work-hours to do the proposed inspection to relieve the pressure on mechanics.

The FAA disagrees. For this AD, we derived the work-hours from the Hawker Beechcraft Corporation service information. Those work-hours were used to calculate the estimated cost impact on the owners/operators of the affected airplanes. The FAA uses that cost estimate in the economic analysis to determine if the AD will have a substantial impact on small entities. In general, the direct cost to an operator is the most significant economic consideration of an AD. Since the work-hours in the AD are estimates for determining cost impact to the operator, maintenance personnel may take more or less time to do the inspection and/or maintenance as is necessary for that particular aircraft or task. Moderately increasing the estimated work-hours for the initial inspection does not significantly increase the cost impact on the operator.

We are not changing the final rule AD action based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 71 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $85 per hour = $85	Not applicable	$85	$6,035

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

Labor cost	Parts cost	Total cost per airplane
.5 work-hour × $85 per hour = $42.50	$50	$92.50

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

Labor cost	Parts cost	Total cost per airplane
6 work-hours × $85 per hour = $510	$100	$610

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

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2009–1176; Directorate Identifier 2009–CE–062–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding a new AD to read as follows:

2010–06–02 Hawker Beechcraft Corporation: Amendment 39–16226; Docket No. FAA–2009–1176; Directorate Identifier 2009–CE–062–AD.

Effective Date

(a) This AD becomes effective on April 15, 2010.

Affected ADs

(b) None.

Applicability

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

Subject

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

Unsafe Condition

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

Compliance

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

Actions	Compliance	Procedures
(1) Inspect the installation of the stand-off hardware between the heater fuel line and heater over-temperature sensor wires for minimum clearance.	Within the next 50 hours time-in-service (TIS) after April 15, 2010 (the effective date of this AD) or within the next 12 months after April 15, 2010 (the effective date of this AD), whichever occurs first.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.
(2) If, during the inspection required in paragraph (f)(1) of this AD, the stand-off hardware is not installed or it does not maintain the minimum clearance, install stand-off hardware as specified in the service information.	Before further flight after the inspection where the missing stand-off hardware and/or inadequate clearance was found.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.
(3) Inspect the brake reservoir line and the fuel heater power wire for damage.	Within the next 50 hours TIS after April 15, 2010 (the effective date of this AD) or within the next 12 months after April 15, 2010 (the effective date of this AD), whichever occurs first.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.
(4) If, during the inspection required in paragraph (f)(3) of this AD, damage is found, repair or replace damaged tubing and/or wiring found.	Before further flight after the inspection where damaged tubing and/or wiring was found.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.
(5) Inspect the installation of the stand-off hardware between the brake reservoir line and the fuel heater power wire for minimum clearance.	Within the next 50 hours TIS after April 15, 2010 (the effective date of this AD) or within the next 12 months after April 15, 2010 (the effective date of this AD), whichever occurs first.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.
(6) If, during the inspection required in paragraph (f)(5) of this AD, the stand-off hardware is not installed or it does not maintain the minimum clearance, install stand-off hardware as specified in the service information.	Before further flight after the inspection where the missing stand-off hardware and/or inadequate clearance was found.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(h) You must use Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on March 2, 2010.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5024 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0993; Directorate Identifier 2009–NM–089–AD; Amendment 39–16229; AD 2010–06–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–2C, B4–103, and B4–203 Airplanes; and Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, and B4–622R Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

One A300–600 aeroplane operator reported that, during a routine inspection, the Right Hand frame 40 forward fitting between stringer 32 and stringer 33 was found cracked. The subject aeroplane had previously been modified in accordance with Airbus SB A300–57–6053 (Airbus Modification 10453).

This condition, if not corrected, could result in a deterioration of the structural integrity of the frame.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 15, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140,

1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 28, 2009 (74 FR 55485). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> One A300–600 aeroplane operator reported that, during a routine inspection, the Right Hand frame 40 forward fitting between stringer 32 and stringer 33 was found cracked. The subject aeroplane had previously been modified in accordance with Airbus SB A300–57–6053 (Airbus Modification 10453).
>
> This condition, if not corrected, could result in a deterioration of the structural integrity of the frame.
>
> As no fatigue maintenance tasks (Inspection SB or Airworthiness Limitation Item) presently exist to inspect the affected area for aeroplanes having incorporated Airbus Modification 10453 preventively (without preliminary crack finding), Airbus has developed a new inspection [for cracking, and repair if necessary] to ensure structural integrity of the concerned area of frame 40.
>
> * * * * *

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Increase Work Hours

FedEx Express states that it has determined that the inspection thresholds in the NPRM allow sufficient time to accomplish the proposed inspection during a scheduled maintenance check. FedEx Express adds that the number of work-hours and elapsed time necessary to accomplish the proposed inspections will not impact the overall span-time of its planned scheduled maintenance check, unless cracks are found. FedEx Express notes that if cracks are found, significant downtime of approximately 42 hours will be required to accomplish the corrective action. FedEx Express adds that it has already accomplished the inspections on five airplanes with no crack findings.

From these statements, we infer that FedEx Express is requesting that we revise the AD to include the work-hours necessary to repair any crack findings. We do not agree. The economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on-condition" actions (that is, actions needed to correct an unsafe condition such as cracking), because, regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. We have not changed the AD in this regard.

Explanation of Additional Note in the Final Rule

We have included a new Note 2 in this AD (and renumbered subsequent notes accordingly) to provide clarification that a repair is considered any modification that restores the original strength of the cracked part.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work hour to $85 per work hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 153 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $39,015, or $255 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2010–06–05 Airbus: Amendment 39–16229. Docket No. FAA–2009–0993; Directorate Identifier 2009–NM–089–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A300 B4–2C, B4–103, and B4–203 airplanes, all serial numbers, modified preventively in service (without preliminary crack findings) in accordance with Airbus Service Bulletin A300–53–0297 (Airbus Modification 10453).

(2) Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes, all serial numbers, modified preventively in service (without preliminary crack findings) in accordance with Airbus Service Bulletin A300–57–6053 (Airbus Modification 10453).

Note 1: For airplanes on which Airbus Service Bulletin A300–53–0297 or A300–57–6053 (Airbus Modification 10453), as applicable, has been incorporated as a corrective action (repair following crack finding), no action is required by this AD.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

"One A300–600 aeroplane operator reported that, during a routine inspection, the Right Hand frame 40 forward fitting between stringer 32 and stringer 33 was found cracked. The subject aeroplane had previously been modified in accordance with Airbus SB A300–57–6053 (Airbus Modification 10453).

"This condition, if not corrected, could result in a deterioration of the structural integrity of the frame.

"As no fatigue maintenance tasks (Inspection SB or Airworthiness Limitation Item) presently exist to inspect the affected area for aeroplanes having incorporated Airbus Modification 10453 preventively (without preliminary crack finding), Airbus has developed a new inspection [for cracking, and repair if necessary] to ensure structural integrity of the concerned area of frame 40."

* * * * *

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the applicable time specified in Table 1 of this AD: Do a one-time detailed visual inspection of the forward fitting at frame 40 on both sides of the airplane, in accordance with Airbus Mandatory Service Bulletin A300–57A6108 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes) or A300–53A0387 (for Model A300 B4–2C, B4–103, and B4–203 airplanes), both including Appendices 01 and 02, both dated September 12, 2008.

TABLE 1—COMPLIANCE TIMES

Airplane models/configuration	Compliance time
A300 B4–2C and B4–103 airplanes on which Airbus Service Bulletin A300–53–0297 was done prior to the accumulation of 9,000 total flight cycles.	Prior to the accumulation of 18,000 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later.
A300 B4–2C and B4–103 airplanes on which Airbus Service Bulletin A300–53–0297 was done on or after the accumulation of 9,000 total flight cycles.	Within 5,500 flight cycles after accomplishment of Airbus Service Bulletin A300–53–0297, or within 6 months after the effective date of this AD, whichever occurs later; except, for airplanes that, as of the effective date of this AD, have accumulated 11,000 flight cycles or more since accomplishment of Airbus Service Bulletin A300–53–0297, within 3 months after the effective date of this AD.
A300 B4–203 airplanes on which Airbus Service Bulletin A300–53–0297 was done prior to the accumulation of 8,300 total flight cycles.	Prior to the accumulation of 15,000 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later.
A300 B4–203 airplanes on which Airbus Service Bulletin A300–53–0297 was done on or after the accumulation of 8,300 total flight cycles.	Within 4,100 flight cycles after accomplishment of Airbus Service Bulletin A300–53–0297, or within 6 months after the effective date of this AD, whichever occurs later; except, for airplanes that, as of the effective date of this AD, have accumulated 8,200 flight cycles or more since accomplishment of Airbus Service Bulletin A300–53–0297, within 3 months after the effective date of this AD.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes on which Airbus Service Bulletin A300–57–6053 was done prior to the accumulation of 6,100 total flight cycles.	Prior to the accumulation of 11,500 total flight cycles, or within 3 months after the effective date of this AD, whichever occurs later.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes on which Airbus Service Bulletin A300–57–6053 was done on or after the accumulation of 6,100 total flight cycles.	Within 3,300 flight cycles after accomplishment of Airbus Service Bulletin A300–57–6053, or within 6 months after the effective date of this AD, whichever occurs later; except, for airplanes that, as of the effective date of this AD, have accumulated 6,600 flight cycles or more since accomplishment of Airbus Service Bulletin A300–57–6053, within 3 months after the effective date of this AD.

(2) Except as required by paragraph (f)(3) of this AD: If any crack is found during the inspection required by paragraph (f)(1) of this AD, before further flight, do a temporary or definitive repair, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or A300–57–6052, Revision 03, dated May 27, 2002, including Airbus Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997 (for Model A300 B4–601, B4–603,

B4–605R, B4–620, B4–622, and B4–622R airplanes).

(3) If any crack found during the inspection required by paragraph (f)(1) of this AD cannot be repaired in accordance with Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002; or A300–57–6052, Revision 03, dated May 27, 2002: Contact Airbus for repair instructions and before further flight repair the crack using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent.)

Note 2: A repair is considered any modification that restores the original strength of the cracked part.

(4) Submit an inspection report in accordance with Appendix 01 of Airbus Mandatory Service Bulletin A300–53A0387, dated September 12, 2008 (for Model A300 B4–2C, B4–103, and B4–203 airplanes); or Airbus Mandatory Service Bulletin A300–57A6108, dated September 12, 2008 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes); to the address identified on the reporting sheet, at the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: Although the MCAI or Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002; or A300–57–6052, Revision 03, dated May 27, 2002; allows further flight after cracks are found during compliance with the required action, paragraph (f)(3) of this AD requires that the cracks be repaired before further flight.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. 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

(h) Refer to MCAI EASA Airworthiness Directive 2009–0094, dated April 21, 2009 (Correction: May 29, 2009), and the applicable service information specified in Table 2 of this AD, for related information.

TABLE 2—RELATED SERVICE INFORMATION

Document	Revision	Date
Airbus Mandatory Service Bulletin A300–53A0387, including Appendices 01 and 02	Original	September 12, 2008.
Airbus Mandatory Service Bulletin A300–57A6108, including Appendices 01 and 02	Original	September 12, 2008.
Airbus Service Bulletin A300–53–0268	06	January 7, 2002.
Airbus Service Bulletin A300–57–6052, including Airbus Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997.	03	May 27, 2002.

Material Incorporated by Reference

(i) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Mandatory Service Bulletin A300–53A0387, including Appendices 01 and 02	Original	September 12, 2008.
Airbus Mandatory Service Bulletin A300–57A6108, including Appendices 01 and 02	Original	September 12, 2008.
Airbus Service Bulletin A300–53–0268	06	January 7, 2002.
Airbus Service Bulletin A300–57–6052, including Airbus Drawings 15R53810394, Issue A, dated December 21, 1998, and 21R57110247, Issue A, dated June 20, 1997.	03	May 27, 2002.

Airbus Service Bulletin A300–53–0268, Revision 06, dated January 7, 2002, has the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–6, 9, 10, 25–27	06	January 7, 2002.
7, 8, 11–24, 28–84	05	June 9, 2000.

Airbus Service Bulletin A300–57–6052, Revision 03, dated May 27, 2002, has the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–56	03	May 27, 2002.
DRAWING 15R53810394		
1–2	A	December 21, 1998.
DRAWING 21R57110247		
1–2	A	May 28, 1997.
3–4	A	June 20, 1997.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 4, 2010.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5165 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0649; Directorate Identifier 2008–NM–218–AD; Amendment 39–16225; AD 2010–06–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

Two incidents [of near mid-air collision] have occurred on Airbus A320 Family aircraft during [a] Resolution Advisory with Traffic Alert and Collision Avoidance System (TCAS). One of the Human-Machine Interface (HMI) factors was the lack of visibility of relevant information on the Primary Flight Display (PFD).

This condition, if not corrected, could result in erroneous interpretation of TCAS Resolution Advisories, leading to an increased risk of mid-air collision.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 15, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 15, 2009 (74 FR 34274). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Two incidents [of near mid-air collision] have occurred on Airbus A320 Family aircraft during [a] Resolution Advisory with Traffic Alert and Collision Avoidance System (TCAS). One of the Human-Machine Interface (HMI) factors was the lack of visibility of relevant information on the Primary Flight Display (PFD).

This condition, if not corrected, could result in erroneous interpretation of TCAS Resolution Advisories, leading to an increased risk of mid-air collision.

EIS1 [Electronic Instrument System] software standard V60 introduces modifications to the vertical speed indication to further improve the legibility in the case of TCAS Resolution Advisory. This modification consists of a change in the needle colour and thickness and an increase in width of the TCAS green band.

For the reasons described above, this AD requires the introduction of the new software standard V60 and prohibits reinstallation of earlier software versions V32, V40 and V50.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the NPRM

Air Line Pilots Association (ALPA), International, supports the intent of the AD.

Request To Shorten the Proposed Compliance Time

ALPA states that the proposed 60-month compliance time is excessive, given that Airbus Mandatory Service Bulletin A320–31–1286 was issued in January, 2008. Based on the safety benefits of the AD as well as the minimal labor required to comply with

the AD, ALPA recommends a 12-month compliance time. ALPA further states that a 12-month requirement would be the same as a similar AD for the EIS2 (AD 2009–23–05, Amendment 39–16077, 74 FR 57578, November 9, 2009).

We disagree with the request to reduce the proposed compliance time. In developing the proposed compliance time, we considered the scope of work, the safety implications, the average utilization rate of the affected fleet, the maintenance schedules of the operators, and the availability of required modification parts. In addition, this AD which requires modification of the EIS1 has a longer compliance time, versus that for AD 2009–23–05 which requires modification of the EIS2, because the EIS1 modification specified in this AD includes a requirement to reprogram the erasable programmable read only memory (EPROM) (for certain configurations) in addition to replacing or reprogramming the on-board replaceable module (OBRM) required by both ADs. We have not changed the AD in this regard.

Request To Change the Proposed Costs of Compliance

Air Transport Association (ATA), on behalf of its member Northwest Airlines (NWA), states that the estimated costs of compliance in the NPRM are inaccurate, and that the software will cost $14,460 per airplane ($4,820 for each of the 3 display management computers (DMC) per airplane).

We agree. We have verified these cost figures and have revised the Costs of Compliance section of this AD accordingly.

Request To Include Later Software Revisions

ATA, on behalf of NWA, requests that we revise the NPRM to allow installation of subsequent revision levels of the EIS1 software. NWA states that it understands that Airbus is working on a new DMC standard (version 70) as an upgrade to the version 60 referred to in the NPRM, and that the safety concerns given in the NPRM are with prior versions of the software (versions 32, 40, and 50).

We do not agree to revise the NPRM to allow later versions of software in the AD. We cannot allow installation of later software versions that have not yet been approved in an AD. However, under the provisions of paragraph (g)(1) of the final rule, we will consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that the new compliance method would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect about 564 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $14,460 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 parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,347,200, or $14,800 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 AD:

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 AD and placed it in the AD docket.

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 the NPRM, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2010–06–01 Airbus: Amendment 39–16225. Docket No. FAA–2009–0649; Directorate Identifier 2008–NM–218–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers (MSN); equipped with electronic instrument system 1 (EIS1) standard V32 (display management computer (DMC)) part number (P/N) 9615325032), EIS1 standard V40 (DMC P/N 9615325040), or EIS1 standard V50 (DMC P/N 9615325050).

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

"Two incidents [of near mid-air collision] have occurred on Airbus A320 Family aircraft during [a] Resolution Advisory with Traffic Alert and Collision Avoidance System (TCAS). One of the Human-Machine Interface (HMI) factors was the lack of visibility of relevant information on the Primary Flight Display (PFD).

"This condition, if not corrected, could result in erroneous interpretation of TCAS Resolution Advisories, leading to an increased risk of mid-air collision.

"EIS1 software standard V60 introduces modifications to the vertical speed indication to further improve the legibility in the case of TCAS Resolution Advisory. This modification consists of a change in the needle colour and thickness and an increase in width of the TCAS green band.

"For the reasons described above, this AD requires the introduction of the new software standard V60 and prohibits reinstallation of earlier software versions V32, V40 and V50."

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 60 months after the effective date of this AD, modify the airplane by installing EIS1 software standard V60 (DMC P/N 9615325060), in accordance with the instructions of Airbus Mandatory Service Bulletin A320–31–1286, dated January 22, 2008.

(2) After modifying the airplane as required by paragraph (f)(1) of this AD, no person shall install EIS1 software standard V32 (DMC P/N 9615325032), EIS1 software standard V40 (DMC P/N 9615325040), or EIS1 software standard V50 (DMC P/N 9615325050) on that airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. 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.

(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

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0198, dated November 4, 2008; and Airbus Mandatory Service Bulletin A320–31–1286, dated January 22, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A320–31–1286, dated January 22, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 25, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–4876 Filed 3–10–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No.: 0907021105–0024–03]

RIN 0648–AY00

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 10

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures in Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 10 was developed by the Mid-Atlantic Fishery Management Council (Council) to bring the FMP into compliance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements by establishing a rebuilding program that allows the butterfish stock to rebuild and protects the long-term health and stability of the stock; and by minimizing bycatch and the fishing mortality of unavoidable bycatch, to the extent practicable, in the MSB fisheries. Amendment 10 increases the minimum codend mesh size requirement for the *Loligo* squid (*Loligo*) fishery; establishes a butterfish rebuilding program with a

butterfish mortality cap for the *Loligo* fishery; establishes a 72-hr trip notification requirement for the *Loligo* fishery; and requires an annual assessment of the butterfish rebuilding program by the Council's Scientific and Statistical Committee (SSC). This rule also makes minor, technical corrections to the existing regulations.

DATES: Effective April 12, 2010, except for the following:

1. The amendments to § 648.23(a)(3) introductory text and § 648.23(a)(3)(i), which are effective September 13, 2010;

2. The addition of §§ 648.21(b)(3)(iii)—(iv), 648.22(a)(5), and § 648.26, which are effective January 1, 2011.

ADDRESSES: A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 10 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the approved measures and alternatives. Copies of Amendment 10, including the FSEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The FSEIS/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this rule should be submitted to the Regional Administrator of the Northeast Regional Office at 55 Great Republic Drive, Gloucester, MA 01930, and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

This amendment was developed to bring the MSB FMP into compliance with Magnuson-Stevens Act requirements by: (1) Implementing a rebuilding program that allows the butterfish stock to rebuild, and protects the long-term health and stability of the stock; and (2) minimizing bycatch, and the fishing mortality of unavoidable bycatch, to the extent practicable, in the MSB fisheries.

In February 2005, NMFS notified the Council that the butterfish stock was overfished, which triggered Magnuson-Stevens Act requirements to implement rebuilding measures for the stock. In response, an amendment to the MSB FMP was initiated by the Council in October 2005. The Council prepared a Draft Environmental Impact Statement (DEIS) to evaluate various alternatives to rebuild butterfish and reduce bycatch, to the extent practicable. The DEIS comment period ended June 23, 2008. The Council held three public meetings on Amendment 10 during June 2008, and adopted Amendment 10 on October 16, 2008. The Notice of Availability (NOA) for Amendment 10 was published on July 14, 2009 (74 FR 33986), with a comment period ending on September 14, 2009. A proposed rule for Amendment 10 was published on September 3, 2009 (74 FR 45597), with a comment period ending on October 19, 2009. On October 9, 2009, NMFS approved Amendment 10 on behalf of the Secretary of Commerce.

This rule implements a rebuilding program for butterfish with measures that: Increase the minimum codend mesh requirement for the *Loligo* fishery from 1⅞ inches (48 mm) to 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sep–Dec), starting in 2010; establish a butterfish mortality cap program for the *Loligo* fishery, starting in 2011; establish a 72-hour trip notification requirement for the *Loligo* fishery, to facilitate the placement of NMFS observers on *Loligo* trips, starting in 2011; and require an annual assessment of the butterfish mortality cap program by the Council's SSC and, if necessary, implementation of additional butterfish rebuilding measures through the annual specifications process. The proposed rule includes detailed information about the Council's development of these measures, and that discussion is not repeated here.

Subsequent to the development, submission and approval of Amendment 10, the 49th Northeast Regional Stock Assessment Workshop (SAW 49) results, published in January 2010, provided updated estimates of butterfish fishing mortality and stock biomass. The results were not available for the Amendment 10 review and approval on October 9, 2009. The estimates of butterfish fishing mortality and total biomass resulting from SAW 49 are highly uncertain, and the final assessment report states that it would be inappropriate to compare the previous status determination criteria from SAW 38 in 2004 with the current assessment estimates of spawning stock biomass and fishing mortality, because measures of population abundance in the current assessment are scaled much higher than those in the previous assessment.

The current status of the butterfish stock is unknown because biomass reference points could not be determined in the SAW 49 assessment. Though the butterfish population appears to be declining over time, fishing mortality does not seem to be the major cause. Butterfish have a high natural mortality rate, and the current estimated fishing mortality rate (F = 0.02) is well below all candidate overfishing threshold reference points. The assessment report noted that predation is likely an important component of the butterfish natural mortality rate (currently assumed to be 0.8), but also noted that estimates of consumption of butterfish by predators appear to be very low. In short, the underlying causes for population decline are unknown. Amendment 10 recommends that butterfish acceptable biological catch (ABC) be derived from applying an F of 0.1 to the most current estimate of stock biomass. In the absence of a current stock biomass estimate and reliable estimate of natural mortality, this methodology will need to be reconsidered when the Council's SSC next recommends a butterfish ABC.

Despite the considerable uncertainty in the recent assessment, there was no evidence presented that suggests that the status of the butterfish stock has improved since the 2004 SAW 38 assessment. Thus NMFS has the responsibility to implement measures to reduce bycatch in MSB fisheries to the extent practicable and that promote the long-term health and stability of the butterfish stock. The approved Amendment 10 butterfish rebuilding program and *Loligo* codend mesh size increase will limit butterfish discards and promote butterfish recruitment over a defined time period, while also reducing the bycatch and discard of other non-target species in the *Loligo* fishery. These measures are necessary to meet the objectives and requirements of the Magnuson-Stevens Act.

Butterfish Rebuilding Program

This action establishes a 5-year butterfish rebuilding program, extending from 2010 through 2014. In 2004, when the SAW 38 determined that butterfish was overfished, it advised that rebuilding of the butterfish stock will be dependent upon increases in recruitment, which recently has been low to intermediate. Rebuilding is further complicated because the natural mortality rate of butterfish is high, butterfish have a short lifespan, and fishing mortality is primarily attributed to discards (discards have been estimated to equal twice the annual landings). Analyses have shown that the

primary source of butterfish discards is the *Loligo* fishery because of the use of small-mesh, diamond codends (1⅞-inches (48-mm) minimum codend mesh size) and the year-round, co-occurrence of butterfish and *Loligo.* Likely due to the lack of a market for butterfish, and sporadic butterfish availability, there has not been a significant butterfish fishery since 2002 (recent annual landings have been 437–544 mt), resulting in the discard of both butterfish juveniles and spawning stock.

In order to rebuild the butterfish stock, a reduction of the amount of butterfish discards and an increase in butterfish recruitment are both necessary. This action implements measures to reduce the fishing mortality on butterfish that occurs as the result of discards in the *Loligo* fishery, which is the primary source of butterfish discard mortality. These measures are expected to also reduce the bycatch of other finfish species.

The Amendment 10 analyses indicate that the stock can be rebuilt by 2014. This conclusion is supported by the SSC-reviewed auto-regressive (AR) time series model output in Amendment 10, which suggests that the butterfish stock is able to rebuild within 1 year, provided long-term average recruitment occurs and F is kept at 0.1. Assuming future butterfish recruitment is similar to butterfish recruitment seen during 1968–2002, implementing the butterfish mortality cap in 2011 achieves an 88-percent probability of at least one large recruitment event occurring during years 2–5 of the butterfish rebuilding period.

During Year 1 (2010) of the rebuilding program, the minimum codend mesh size requirement will increase to 2⅛ inches (54 mm); this rule allows participants in the *Loligo* fishery 6 months to obtain the larger mesh necessary to comply with this requirement, so the provision will initially take effect in Trimester III. This measure allows for increased escapement of some juvenile butterfish.

Starting in Year 2 (2011) of the rebuilding program, the butterfish mortality cap for the *Loligo* fishery will be implemented to directly control butterfish catch (landings and discards of all ages) in the *Loligo* fishery, which is the primary source of butterfish fishing mortality. This will facilitate rebuilding of the stock and protection of the rebuilt stock. Amendment 10 recommends that, during the rebuilding period, the butterfish quota will be set through the specifications process, and that that butterfish ABC will be equal to the yield associated with applying an F of 0.1 to the most current estimate of stock biomass. As mentioned above, because the SAW 49 butterfish stock assessment did not provide a reliable estimate of stock biomass or natural mortality, this methodology will need to be reconsidered when the SSC recommends butterfish ABC. Once the stock is determined to be rebuilt, ABC will be specified according to the fishing mortality control rule currently specified in the FMP (*i.e.,* the yield associated with 75 of percent F_{MSY}). Initial Optimum Yield (IOY), Domestic Annual Harvest (DAH), Domestic Annual Processing (DAP) and research quota will continue to be specified as they are currently, with DAH equaling the amount available for landings after the deduction of estimated discards from ABC. This process may be modified to more explicitly account for scientific and management uncertainty in the Council's Omnibus Annual Catch Limit and Accountability Measure Amendment, expected to be implemented in 2011.

Minimum Codend Mesh Size Increase for the Loligo Fishery

This action increases the minimum codend mesh size for otter trawl vessels issued Federal permits to possess *Loligo* squid harvested in or from the Exclusive Economic Zone (EEZ), which, with limited exceptions not applicable here, is U.S. waters 3–200 nm from shore. By virtue of being issued a Federal permit, such vessels are subject to this mesh requirement irrespective of whether they fish in the EEZ or in State waters. The minimum mesh size is increased from 1⅞ inches (48 mm) to 2⅛ inches (54 mm) for such vessels during Trimester I (January–April) and Trimester III (September–December). The minimum mesh size of 1⅞ inches (48 mm) is maintained for these vessels during Trimester II (May–August).

Amendment 10 specifies that the Council will re-evaluate the effects of the minimum codend mesh size increase after the measure has been in effect for 2 years. The evaluation will involve the review of Northeast Fisheries Observer Program (NEFOP) catch rate data, before and after the mesh size increase, for both *Loligo* and non-target species, as well as any other new scientific information (*e.g.,* gear selectivity information). The results of the evaluation will be used to maintain or revise the minimum codend mesh size requirement for the *Loligo* fishery through the MSB specifications process.

Butterfish Mortality Cap

The butterfish mortality cap will account for all butterfish caught by the *Loligo* fishery (discards as well as landings), and will be specified to equal 75 percent of the butterfish ABC. The remaining 25 percent of the butterfish ABC will be allocated for butterfish catch in other fisheries, including trips landing less than 2,500 lb (1.13 mt) of *Loligo.*

Harvesting in the *Loligo* squid fishery is currently regulated under a commercial quota, which is allocated by trimester (Trimester I = Jan–Apr; Trimester II = May–Aug; Trimester III = Sept–Dec). During each trimester, if *Loligo* landings are projected to reach a specified level, the directed *Loligo* fishery is closed, and vessels with *Loligo* permits are prohibited from landing more than 2,500 lb (1.13 mt) of *Loligo.*

The butterfish mortality cap is also allocated by trimester, as follows: Trimester I–65 percent; Trimester II–3.3 percent; Trimester III–31.7 percent. This action specifies that the directed *Loligo* fishery will close during Trimesters I and III, if the butterfish mortality cap is harvested, but will not close during Trimester II. Because the butterfish mortality cap allocated to Trimester II is relatively small (3.3 percent of the total butterfish mortality cap) and butterfish bycatch during Trimester II has historically been low, closure predictions would be based on limited data. To minimize uncertainty associated with closing the directed *Loligo* fishery during Trimester II, both the butterfish catch and the butterfish mortality cap for Trimester II are applied to Trimester III. Therefore, operationally, the butterfish mortality caps from Trimesters II and III are combined, such that 35 percent of the total butterfish mortality cap is tracked during Trimester III. Additionally, any overages/underages from the butterfish mortality cap during Trimester I apply to Trimester III. As a precaution against exceeding the butterfish quota, the *Loligo* fishery is closed when projections indicate that 80 percent of the butterfish mortality cap for Trimester I is projected to be caught, and/or if 90 percent of the annual total butterfish mortality cap is projected to be harvested in Trimester III. If Trimester II bycatch levels are high, reducing the butterfish mortality cap for Trimester III, the Council may recommend an inseason closure mechanism for Trimester II in future specifications.

The butterfish mortality cap will be monitored by NMFS's Northeast Regional Fishery Statistics Office (FSO). Butterfish catch data from observed trips with 2,500 lb (1.13 mt) or more of *Loligo* onboard will be applied to *Loligo* landings (2,500 lb (1,134 kg) or more) in the dealer database to calculate total

butterfish catch in the *Loligo* fishery. When butterfish catch in the *Loligo* fishery is projected to reach the specified trimester closure thresholds, the directed *Loligo* fishery will close. The Amendment specifies that a weighted average of the current and previous year's observer data will be used to monitor the butterfish catch in the *Loligo* fishery. The exact projection methodology will be developed by FSO, reviewed annually during the MSB specifications process, and be revised as appropriate.

Trip Notification Requirement

To facilitate the placement of observers on *Loligo* trips, Amendment 10 establishes a trip notification requirement. In order for a vessel to possess 2,500 lb (1.13 mt) or more of *Loligo,* a vessel representative will be required to phone NMFS to request an observer at least 72 hr prior to embarking on a fishing trip. If the vessel representative does not make this required trip notification to NMFS, the vessel will be prohibited from possessing or landing more than 2,500 lb (1,134 kg) of *Loligo.* If a vessel is selected by NMFS to carry an observer, the vessel will be required to carry an observer (provided an observer is available) or the vessel will be prohibited from possessing or landing more than 2,500 lb (1,134 kg) of *Loligo.* If a trip is cancelled, a vessel representative will be required to notify NMFS of the cancelled trip (even if the vessel was not selected to carry an observer). If a vessel representative cancels a trip after its vessel is selected to carry an observer, that vessel will be assigned an observer on its next trip.

Annual Assessment of Butterfish Mortality Cap

The SSC will annually review the performance of the butterfish mortality cap program during the specification process. The items considered by the SSC will include, but are not limited to the: Coefficient of variation (CV) of the butterfish bycatch estimate; estimate of butterfish mortality; and status and trends of the butterfish stock. If the CV of the butterfish mortality estimate or another butterfish mortality cap performance parameter is found to be unacceptable by the SSC, NEFOP will be consulted to evaluate if observer coverage can be increased to acceptable levels. If increasing NEFOP coverage is not possible, the Council would next consider implementation of an industry-funded observer program in a subsequent action. If increased observer coverage proves impractical or ineffective, the SSC could recommend one or more of following for the upcoming fishing year:

(1) Modification to the *Loligo* quota;

(2) Modification to the butterfish quota;

(3) Increases to minimum codend mesh size for the *Loligo* fishery;

(4) Establishing Gear Restricted Areas (GRAs); or

(5) Establishing any measure that could be implemented via the MSB specification process.

If the Council does not adopt the SSC recommendations, then NMFS will implement measures through the MSB annual specifications process to assure the rebuilding of the butterfish stock, consistent with existing MSB regulations at § 648.21(d)(2).

The butterfish mortality cap is allocated 75 percent of the butterfish ABC, which leaves the remaining 25 percent of the butterfish ABC to account for direct harvest and discard mortality in other fisheries. Butterfish landings and observed discards in these fisheries will be reviewed as part of the SSC's annual assessment of the performance of the butterfish mortality cap program during the specification process. If butterfish landings and observed discards in other fisheries are found to exceed the 25-percent allocation, then the allocation of the butterfish quota between the *Loligo* fishery and other fisheries can be revised, or other measures (*e.g.,* reduced trip limits) can be implemented to constrain the butterfish catch in other fisheries to 25 percent of the butterfish ABC.

Technical Corrections

This final rule also makes minor technical corrections to existing regulations. These corrections do not revise the intent of any regulations; they only clarify the intent of existing regulations by correcting technical errors. In § 648.48.13(a), transfer-at-sea requirements for squid and butterfish are revised to omit references to a mackerel permit. In § 648.14(g)(2)(ii)(C), the reference to possession allowances is corrected. In § 648.21(f)(1), the description of *Loligo* trimesters is corrected. Lastly, in § 648.25(a), possession restrictions for mackerel is revised to omit references to the butterfish fishery.

Comments and Responses

NMFS received two comments during the comment period relating to the NOA, one from an environmental group and the other from an individual. An additional five comment letters were received on the proposed rule for Amendment 10; letters were from two environmental groups, one industry representative, and two individuals. Several issues that are not relevant to Amendment 10 were raised by various commenters; only the comments relevant to Amendment 10 are addressed below.

Comment 1: In a comment relating to the NOA, an environmental group urged NMFS to disapprove Amendment 10 because, in its view, it does not minimize bycatch to the extent practicable. The commenter expressed the view that the butterfish mortality cap and increased minimum mesh size in Amendment 10 are insufficient and do not do enough to address bycatch of species other than butterfish. They noted that the *Loligo* fishery accounts for more than 10 percent of the observed discards of 12 species, including summer flounder, scup, silver hake, red hake, and spiny dogfish. They stated that Amendment 10 indicates that the implementation of the GRAs would reduce discards of several of species other than butterfish. In their view, the implementation of a larger minimum mesh size would allow greater escapement of both squid and finfish, while still allowing capture of both at larger sizes and the mitigation of earlier harvest losses.

The commenters also contended that Amendment 10 fails to demonstrate that the other bycatch reduction measures considered were impracticable, and fails to assess the benefits of other possible alternatives against the potential costs. They cited discussion in the document that indicates that an increase in the minimum mesh size requirement for the *Illex* fishery would have no measurable socioeconomic impacts. They noted their view that the analysis of the GRAs indicates a range of potential economic losses, but also concludes that it is difficult to predict the economic impacts because of uncertainty about the changes in fishing activity that would occur in response to the measure (including effort shifts and the possibility that vessels could continue to fish within the GRAs with the larger mesh size).

The commenters questioned the meaning of the statement in the amendment that the only way to determine practicability of the larger minimum mesh size increases would be to evaluate the impacts of the initial increase for 2 years because they do not understand what information this process will yield concerning the practicability of mesh sizes larger than 2⅛ inches (54 mm). They argued that a commitment to continue to study bycatch reduction measures does not satisfy legal requirements. They also advocated for the implementation of the

butterfish mortality cap in 2010, rather than 2011.

Response 1: The points summarized above were considered when NMFS made the decision to approve Amendment 10. The commenters, along with other groups, raised these concerns on many occasions during the development Amendment 10, and included them in comments submitted during the public comment period for the DEIS. The points were considered by the Council and responded to in the FSEIS. The Council explained in that document that the butterfish mortality cap and increased minimum mesh size were selected by the Council to rebuild butterfish and reduce bycatch, while also avoiding the potential negative revenue impacts associated with GRAs and larger minimum mesh sizes. These include revenue loss due to *Loligo* escapement if a larger minimum mesh size were to be implemented for the entire fishery, and lost revenue related to *Loligo* escapement from the larger mesh sizes imposed in the proposed GRAs.

While the measures were adopted in large part because of the anticipated effect they will have in reducing butterfish bycatch and rebuilding the butterfish stock, the measures will also reduce bycatch of other species by the *Loligo* fishery. In particular, from 2001 to 2006, the *Loligo* fishery was responsible for 7, 8, 56, 31, and 10 percent of all NEFOP discards of summer flounder, scup, silver hake, red hake and spiny dogfish, respectively. Measures that reduce fishing effort in MSB fisheries, such as the butterfish mortality cap, are likely to reduce all non-target species discarding. In addition, available selectivity analyses provide evidence for increased escapement of juvenile butterfish (less than 12 cm or 4¾ inches in length) at codend mesh sizes above the current minimum. The combination of measures in Amendment 10 was adopted by the Council because, combined, they have a higher potential to reduce bycatch in MSB fisheries than the measures that would have eliminated exemptions for *Illex* vessels from *Loligo* minimum codend mesh-size requirements and established seasonal GRAs.

The FSEIS analysis suggests that the total or partial elimination of the mesh-size exemption for the *Illex* fishery would only produce modest reductions in bycatch and discards of juvenile butterfish. NEFOP data show that the *Illex* fishery accounts for only 7 percent of annual butterfish discards. The Council concluded that, though the measure might only have limited impacts on the *Illex* fishery, the marginal reduction in juvenile butterfish discards did not warrant the partial or total discontinuation of the exemption.

The percentage of total bottom otter trawl butterfish discards that occur in the proposed GRAs ranged from 16 to 36 percent. These percentages represent the maximum amount of discard reduction that would be associated with the GRAs; the redirection of fishing activity to areas outside of the GRAs would also cause butterfish discards. These reductions were found to be insufficient when compared to the potential negative impact on vessels that use bottom otter trawl gear in the proposed GRAs.

NMFS notes that the NOA commenter advocated contradictory positions by seeking to have the butterfish mortality cap implemented in 2010, but also to have the amendment disapproved. Under the Magnuson-Stevens Act, NMFS has the authority only to approve, partially approve, or disapprove an FMP amendment. NMFS does not have the authority to select alternatives that were not proposed by the Council, or to modify elements of the measures that were proposed by the Council.

Comment 2: Concerns similar to those expressed during the NOA comment period were expressed in comments submitted by this environmental organization on the proposed rule, and in comments submitted by a second environmental group on the proposed rule. Additional points made in these comments included their view that the analysis of the alternatives that would have required a larger minimum mesh for the *Loligo* fishery indicates that the *Loligo* fishery could be profitably engaged in using larger mesh sizes, and they contended that the only argument made in the amendment to the contrary is based on statements by industry representatives that the loss of *Loligo* would be substantial. In addition, they noted that the analyses in the amendment show that the 2⅛-inch (54-mm) minimum mesh size is predicted to have limited benefits to butterfish because escapement will be low. They argue that the bycatch reduction measures in Amendment 10 violate both the Magnuson-Stevens Act National Standard 2 requirement to use the best scientific information available, and the National Standard 9 requirement to reduce bycatch to the extent practicable.

An individual opposed the continued use of the smaller minimum mesh during Trimester II because most of the smaller fish and squid are caught during this period. The industry group opposed the proposed minimum mesh size increase on the grounds that the increase will result in reduced efficiency of squid gear, which will translate to higher operating costs for *Loligo* vessels.

Response 2: Amendment 10 does indicate that the selected minimum codend mesh size increase (to 2⅛ inches (54 mm)) will be less effective than more substantial mesh size increases in rebuilding the butterfish stock or minimizing bycatch in the MSB fisheries. However, given the lack of published gear studies on *Loligo* selectivity, the Council decided that the best way to determine the practicability of bycatch reduction associated with the range of mesh size alternatives presented in Amendment 10 would be to proceed with a modest codend mesh size increase, and then use observer data and other available scientific information to evaluate the impacts of the mesh size increase for 2 years. The results of the practicability assessment will be used for subsequent decisions to lower, maintain, or raise the minimum codend mesh size requirements for the *Loligo* fishery.

Amendment 10 specifies that, if the Council selected the butterfish mortality cap for implementation, then it would not consider requiring a minimum mesh sizes for the *Loligo* fishery greater than 2½ inches (64 mm) because the butterfish mortality cap would provide the primary protection for butterfish. The Council was concerned that the mesh size increase would add to the economic burden imposed by the mortality cap program; the mortality cap program alone will reduce general discarding only when the *Loligo* fishery is closed. Analysis of NEFOP and Vessel Trip Report (VTR) data suggests that nearly 40 percent of *Loligo* landings are currently taken by vessels using mesh sizes 2⅜ inches (60 mm) and larger, which contradicts the industry claim that larger mesh size increases would affect the profitability of the *Loligo* fishery. Industry members expressed concern throughout the development of Amendment 10 that mesh size increases would affect the profitability of the *Loligo* fishery by reducing *Loligo* catch for the owners of vessels that use smaller mesh sizes.

Originally, the amendment considered a year-round minimum codend mesh size increase for the *Loligo* fishery. During public comment on the amendment, industry members commented that discards were generally low during Trimester II. Analyses in the amendment support the industry's belief that discards of butterfish and other finfish species were low during Trimester II. The *Loligo* quota allocated

to Trimester II is only 17 percent of the annual quota, so even if the mesh-size increase is not in effect for Trimester II, it is still in effect during the harvesting of over 80 percent of the quota.

Comment 3: Both environmental groups opposed the delay in implementation of the butterfish mortality cap to 2011, noting that this represents additional delay in addressing the need to rebuild butterfish. They noted that the Magnuson-Stevens Act required the Council to develop a rebuilding plan for butterfish within a year of the February 2005 notification that butterfish was overfished. They noted that once the Council had missed this deadline, NMFS should have stepped in and developed a rebuilding plan within 9 months. They contended that the Council's statement that it wanted to use the results of the 2009 butterfish stock assessment is not sufficient argument because they believe that the results of the stock assessment could be available soon enough to implement the mortality cap midyear through the existing inseason quota adjustment provision. One group noted that, because the rebuilding plan relies heavily on improved recruitment, failing to protect a single favorable recruitment event during the rebuilding period could prove disastrous.

Response 3: NMFS agrees that the Council did not develop a rebuilding plan for butterfish within 1 year of the notification that the stock was overfished. However, NMFS did not prepare an amendment to institute a rebulilding plan because the Council continued to actively work on the issue. As industry members testified on many occasions, bycatch reduction in the *Loligo* fishery will require the industry to voluntarily use fishing practices that reduce interactions with prohibited or unwanted species. NMFS believes that it was better to allow the Council to complete the public process for Amendment 10, than to intervene.

As explained in Amendment 10, the butterfish mortality cap will be implemented in the second year of the rebuilding plan (2011). The Council had several reasons for this. First, it determined that it was necessary in order to use information from the 2009 updated butterfish stock assessment when setting values for the butterfish mortality cap. The suggestion by the commenter that the new stock assessment information could be effectively used to implement the butterfish mortality cap during the 2010 fishing season is unrealistic, particularly when the Council must begin to develop the 2011 specifications in June 2010. The butterfish stock was last assessed in 2003 and, using the old assessment data, the butterfish mortality cap for the *Loligo* fishery in 2010 would be fairly low (approximately 580 mt for Trimester I, and 320 mt for Trimester III) and could result in closures of the *Loligo* fishery. While the updated stock assessment might result in similarly restrictive caps, the Council wanted the best available data to serve as the basis of the cap, and NMFS agrees that this results in implementation in 2011

The Council specified in Amendment 10 that a weighted average of the observed butterfish catch from the current fishing year and the prior fishing year will be used to extrapolate total butterfish catch for comparison to the butterfish mortality cap. The Council assumed that the *Loligo* fishery would be required to use the 2⅛-inch (54 mm) codend minimum mesh in 2010, and hoped to use that information to monitor the fishery in 2011. Because the mesh size increase is expected to increase the escapement of juvenile butterfish, the Council intended for the data used to monitor the butterfish mortality cap to better reflect the new 2⅛-inch (54 mm) codend mesh size requirement. NMFS has not relied on this rationale, noting that it is necessary to provide the industry with time to come into compliance with new gear requirements, generally 6 months. While observer data will be available for vessels that currently use 2⅛-inch (54 mm) mesh, the Council begins developing specifications in June each year, so the amount of data available to the Council during the development of the 2011 specifications would be limited.

Comment 4: The industry representative commented that the results of the November 2009 SAW assessment should be finalized before moving forward with the butterfish mortality cap provision. The commenter also questioned several aspects of the rebuilding plan because they were not drawn from citable sources. These included the use of the AR time series model to forecast recruitment, and the selection of a rebuilding target F of 0.1 for butterfish, as too conservative for a stock with a natural mortality rate of 0.8.

Response 4: The Council selected a rebuilding F of 0.1 to facilitate rebuilding based on analyses of stock forecasts based on both recent and long-term butterfish recruitment trends. An F of 0.1 simulates the low level of fishing mortality experienced by butterfish in the absence of a directed fishery and as bycatch in the *Loligo* fishery. The results of the stock analyses, presented in Appendix 2 of the FSEIS, suggest that the butterfish stock can recover in a relatively short period if recruitment is high and mortality is kept to a minimum. An AR model was used to project the rebuilding timeframe because butterfish projections were not generated during the butterfish assessment presented in SAW 38, and the model used to set reference points in SAW 38 did not have projection capabilities. The butterfish rebuilding program was developed by the Council's butterfish technical team (FMAT). Models developed by the Council technical teams do not necessarily appear in citable sources. However, the AR model was reviewed by the Council's SSC and determined to be appropriate for forecasting a butterfish stock rebuilding trajectory.

Comment 5: In comments on the proposed rule, both environmental groups expressed concerns about the effectiveness of the butterfish mortality cap provision in the absence of a requirement for real-time monitoring through an industry-funded observer program. Neither group supported the use of the bycatch rate from observed trips to extrapolate overall butterfish catch for comparison to the butterfish mortality cap. They noted that the projection methodology is not described in the amendment, that current observer coverage levels are much lower than SBRM levels, and that the information provided through the low levels of observer coverage is unlikely to be sufficient to support adjustments to calculated bycatch rates. The industry group also expressed concern that the details of the extrapolation methodology are not specified.

Response 5: The amendment shows that observer coverage at the same levels as in 2004–2006 can result in CVs at or near the SBRM standard of 30 percent. The amendment specifies that a 2-year weighted average will be used to extrapolate butterfish catch from observed trips. Beyond that, the specifics of the methodology will be developed by FSO, in cooperation with Council staff and in consultation with the Council, and will be reviewed annually during the MSB specifications process, which also incorporates advice from the Council's SSC. The Council will conduct an annual review of the performance of the mortality cap program, will consult with the NEFOP to evaluate the feasibility of increases in observer coverage if butterfish mortality estimates are found to be unacceptable, and can consider the implementation of an industry-funded observer program, and other measures, in subsequent actions to ensure the success of the

rebuilding program. If non-representative observer data are found to have a confounding impact on the monitoring program, the SBRM Omnibus Amendment provides the Council with authority to implement an industry-funded observer program and/or an observer set-aside program for MSB fisheries through a framework adjustment.

Comment 6: Two environmental groups noted that the use of the observer program to track butterfish catch will likely exacerbate the "observer effect," meaning that the data collected by observers may be non-representative of unobserved trips. They stated that, because achieving the mortality cap in Trimesters I or III could shut down the *Loligo* fishery, there will be pressure on the operators of observed vessels to alter their fishing activities to minimize bycatch, without incentive for unobserved vessels to do the same.

Response 6: NMFS agrees that it is possible that at least some *Loligo* vessel operators may change their fishing behavior, effort, and location when observers are onboard, and that data recorded on some observed trips may not be representative of the fishery as a whole. However, the NEFOP tries to minimize occurrence of the observer effect by using random selection techniques while maximizing coverage of the full fleet, and is further exploring methods to test for observer bias. If observer bias is found to have a confounding impact on the butterfish rebuilding program, the SBRM Omnibus Amendment would allow the implementation of an industry-funded observer program and/or an observer set-aside program for MSB fisheries through framework adjustments, rather than through FMP amendments. An industry-funded observer program could be used to increase the rate of observer coverage to levels found appropriate for accurately estimating butterfish bycatch. Additionally, observer set-aside programs may actually create incentive for vessels to be observed through granting extra quota or increasing possession limits in exchange for carrying an observer.

Comment 7: The industry group opposed the requirement for vessel operators to provide 72-hr advance trip notification to the NEFOP, and believed the NEFOP could be overwhelmed with the high volume of notification calls it would receive prior to *Loligo* trips. The industry group argued that this will delay assigning observers and providing waivers for *Loligo* trips, causing lost opportunities to harvest *Loligo.*

Response 7: NMFS finds this concern to be unwarranted. The Council consulted with the NEFOP throughout the development of the Amendment 10 trip notification requirement. The trip notification requirement will be instrumental in the placement of observers on *Loligo* trips. The requirement was designed so that it can be implemented using existing NMFS resources. The NEFOP currently employs similar notification programs for other fisheries without such problems.

Comment 8: Two environmental groups opposed the allocation of 75 percent of the butterfish ABC to the *Loligo* fishery, because they believed it is too high to constrain butterfish mortality. They also commented that the remaining 25-percent allocation is too low to account for the contribution of the directed butterfish fishery and other fisheries to butterfish mortality.

Response 8: While the amendment notes a recent increase in the proportion of butterfish landings made by vessels without *Loligo*/butterfish permits, and a concern about monitoring the butterfish catch on such vessels, the amendment notes that Council staff examined several sources of data and concluded that the issue does not appear to be major. The analysis suggests that landings by unpermitted vessels have not increased, but, due to a decrease in landings by permitted vessels, such landings represent a larger proportion of the total. Data indicate that butterfish discards relate more to *Loligo* landings than to butterfish landings, and that most *Loligo* landings are obtained through the vessel and dealer reports required of the *Loligo* fishery. The Council and its MSB Monitoring Committee will closely track the monitoring program data to ensure that this system effectively constrains overall mortality.

As described elsewhere in this preamble, the Council and the SSC will consider changes to the rebuilding program as necessary to ensure the success of the rebuilding program.

Comment 9: An environmental organization stated that, if one purpose of the butterfish mortality cap is to provide the *Loligo* industry with incentives to reduce interactions with butterfish through the development of more selective fishing practices, then the amendment should include a plan to collect information about gear innovations from fisherman and incorporate such measures into future regulations.

Response 9: Amendment 10 states that, if bycatch reduction devices are developed and peer-reviewed science concludes that they will help reduce butterfish discarding, the Council will work to require the use of the new gear. NMFS concludes that the amendment does not need to contain a more specific plan in order for innovations to be incorporated into future regulatory actions. There are few gear specifications for the MSB fisheries other than codend mesh requirements, hence it would be possible to incorporate many gear innovations voluntarily. In addition, the Council and NMFS award up to 3 percent of the butterfish and *Loligo* quotas as research set-aside, and requires that proposals for research set-aside grants match Council-identified research priorities. Reduction of bycatch in MSB fisheries will almost certainly be a research priority during the butterfish rebuilding period.

Changes From the Proposed Rule

In § 648.26, paragraph (a) is revised to include submission of vessel permit number and trip duration in the 72-hr trip notification; paragraph (b) is revised to state that NMFS will either assign an observer or grant a waiver exempting the vessel from the observer requirement within 24 hr of the vessel representative's notification of the proposed trip, and that a vessel may not fish in excess of the possession limits in paragraph (c) without an observer or waiver confirmation number; and paragraph (d) is revised to state that vessels that cancel trips that are selected for observer coverage must include the submission of the vessel permit number in trip cancellation notification calls.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan is necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Council prepared an FSEIS for Amendment 10. The FSEIS was filed with the EPA on June 26, 2009; a notice of availability was published on July 2, 2009 (74 FR 31733). In approving Amendment 10 on October 7, 2009, NMFS issued a ROD identifying the selected alternatives. A copy of the ROD is available from NMFS (*see* **ADDRESSES**).

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments,

and a summary of the analyses completed to support the action. A copy of this analysis is available from the Council (*see* **ADDRESSES**).

Statement of Need

The purpose of this action is to rebuild the overfished butterfish stock and minimize, to the extent practicable, bycatch and discards in the MSB fisheries.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Seven comment letters were received during the comment periods on the NOA and proposed rule. The majority of the comments were not specifically directed to the IRFA, but the comment from the industry representative did reference the economic impacts of Amendment 10 on small entities. Comments 1, 6, and 7 were directed at potential economic impacts associated with the minimum mesh size increase, the 72-hr trip notification, and the butterfish mortality cap for the *Loligo* fishery. All public comments on issues relative to the IRFA, in which commenters expressed concern directly and indirectly about the economic impacts of the measures in Amendment 10, are described in the "Comments and Responses" section of the preamble of this rule. NMFS's assessment of the issues raised in comments and its responses is also provided in the "Comments and Responses" section of the preamble of this final rule and, therefore, are not repeated here.

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

The majority of participants in this fishery are small entities, as only very few grossed more than $4 million annually; therefore, there are no disproportionate economic impacts on small entities. The measures in Amendment 10 would primarily affect vessels that participate in the *Loligo* fishery. In 2009, there were 426 vessels issued *Loligo*/butterfish moratorium permits. Section 10.10.14 in Amendment 10 describes the vessels, key ports, and revenue information for the *Loligo* fishery; therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action requires a trip notification requirement for the *Loligo* fishery. The rationale for and description of the measures is included in the preamble of this final rule; therefore, that information is not repeated here. The phone call to NMFS to declare a *Loligo* fishing trip is expected to take less than 2 min in duration. If a vessel representative cancels a declared fishing trip, then a trip cancellation call to NMFS would also be required. The 426 vessels issued *Loligo* permits in 2009 averaged 12 *Loligo* trips per year; therefore, each of these permit holders could average about 12 calls per year. Assuming each trip could be cancelled, permit holders could also place an average of 12 additional calls per year. The estimated duration of the cancellation call is expected to be less than 1 min. The cost of these calls would vary, based on where the call originated, but cost is expected to be minimal. This trip notification requirement does not duplicate, overlap, or conflict with any other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Several of the approved measures in Amendment 10 (*e.g.,* trip notification, minimum mesh size increase, annual assessment of the butterfish mortality cap program) in Amendment 10 are expected to have economic impacts. A detailed economic analysis of the proposed measures, as well as the non-selected alternatives, is in Section 7.5.1 of Amendment 10.

Two of the approved measures in Amendment 10 are not anticipated to have more than minimal economic effects on MSB fishery participants. The requirement that vessels notify NMFS 72 hr prior to embarking on a *Loligo* fishing trip is an administrative measure to facilitate the placement of observers aboard the *Loligo* fleet. As described previously, the economic burden on fishery participants associated with this measure is expected to be minimal. In addition, the annual review of the butterfish mortality cap by the Council's SSC may result in modifications, which will be implemented through the MSB specifications process. The modification measure itself is also administrative and would have only minimal economic effects on fishery participants.

Implementing a 2⅛ inch (54 mm) minimum codend mesh size requirement for the *Loligo* fishery is expected to have larger economic effects on fishery participants than the no action alternative (maintaining the 1⅞ inches (48 mm) minimum codend mesh size requirement), but less of an economic effect than implementing any of the other action alternatives (minimum mesh size requirements of 2⅜ inches (60 mm), 2½ inches (64 mm), or 3 inches (76 mm)). The factors considered in evaluating economic effects of the action alternatives were the cost of replacing a codend and the loss in revenue that may result from *Loligo* escapement through the larger mesh. While the cost of replacing a codend may be substantial, fishery participants routinely replace codends and, as such, the cost of a codend with a larger minimum mesh size may not be a significant additional cost. Replacing a coded can cost between $200 and $700, depending on the size of the net; the cost of replacement codends is not anticipated to vary by mesh size. This action is notifying fishery participants 6 months in advance of the regulatory change and may allow participants to plan purchases, thereby minimizing costs associated with a replacement codend.

The loss of revenue associated with *Loligo* escapement is difficult to quantify. There are no published gear studies of *Loligo* selectivity; therefore quantifying the *Loligo* retention associated with the different mesh sizes is difficult. Studies of other squid species suggest that squid, like fish, are size-selected by gear. Given this, it could be expected that economic effects associated with the mesh size action alternatives increase with mesh size. Economic effects associated with an increased mesh size for the *Loligo* fishery are mitigated because the mesh size increase would not be in effect during Trimester II (May–Aug). The rapid growth of *Loligo* may allow fishery participants to minimize *Loligo* escapement by shifting fishing effort to later in the year, when larger squid would have an increased retention rate.

Implementing a butterfish mortality cap for the *Loligo* fishery has the potential for greater economic effects on fishery participants than the no action alternative (no butterfish mortality cap). Under the approved action alternative, the *Loligo* fishery will close when the

butterfish mortality cap is harvested. If the *Loligo* fishery is closed in response to butterfish catch before the entire *Loligo* fishery is harvested, then a loss of revenue is possible. If the *Loligo* fishery can be prosecuted with minimal butterfish catch and without attaining the butterfish mortality cap, then there is no economic difference between the no action and action alternatives. However, there may be additional costs associated with butterfish avoidance strategies. The potential for *Loligo* revenue loss would be dependent upon the size of the butterfish mortality cap. As described previously, the butterfish mortality cap is based on the level of butterfish abundance. As the butterfish stock rebuilds, the mortality cap will increase and the potential for lost *Loligo* revenue should decrease. When the butterfish stock rebuilds, a directed butterfish fishery could resume, provided discards are kept low, and would have economic benefits for fishery participants.

Differences in the economic effects on fishery participants between the butterfish mortality cap alternatives (butterfish mortality cap allocated by trimester in the same proportions as the *Loligo* quota, *Loligo* landings, or butterfish bycatch rates) are anticipated to be minimal. However, because the approved alternative (butterfish mortality cap based on butterfish bycatch rates) best approximates existing fishery conditions, by considering the ratio of butterfish caught to *Loligo* landed, it is anticipated that the approved alternative will be less constraining on the *Loligo* fishery than the non-selected action alternatives, which are butterfish mortality caps based on only *Loligo* information. As described in Section 7.5.1 of the amendment, if the butterfish mortality cap is based on accurate assumptions about the size of the butterfish stock and butterfish bycatch rates by trimester, then potential *Loligo* revenue loss may be relatively small ($1.0 million), with maximum losses per vessel averaging 0.6 percent and ranging up to 4.1 percent. If assumptions about butterfish stock size and bycatch rates are incorrect, then potential *Loligo* revenue loss may be relatively large ($15.8 million), with maximum losses per vessel averaging 9.1 percent and ranging up to 65 percent. These ranges assume equal distribution of losses based on distributions of landings, but vessels with access to other fisheries may target those fisheries to mitigate lost *Loligo* revenue.

As a tool to minimize bycatch, Amendment 10 considered eliminating current exemptions from *Loligo* minimum mesh size requirements for the *Illex* fishery. There is no minimum codend mesh size requirement for vessels retaining *Illex,* but there is a 1⅞ inch (48 mm) minimum mesh size requirement for vessels retaining *Loligo.* Because squid species can seasonally co-occur, during the months of June–September, the *Illex* fishery is exempt from the *Loligo* minimum mesh size requirement on the *Illex* fishing grounds (*i.e.,* the area seaward of 50 fm (91.45 m) depth contour) where *Loligo* is less often present. Because the *Loligo* fishery accounts for more bycatch than the *Illex* fishery, this action maintains the current exemption to the *Loligo* minimum mesh size requirement for the *Illex* fishery. The economic effects on fishery participants of maintaining the no action alternative are expected to be less than the economic effects associated with any of the action alternatives (*Illex* exemption during June–August, *Illex* exemption during June–July, discontinuation of *Illex* exemption). Similar to the economic effects associated with the proposed increase to the minimum mesh size for *Loligo,* costs to *Illex* fishery participants associated with any of the action alternatives would include replacement codends and increased harvesting effort due to *Illex* escapement. While the cost of replacing a codend may be substantial, fishery participants routinely replace codends and, as such, the cost of a codend with a larger minimum mesh size may not be a significant additional cost. Additionally, the rapid growth of *Illex* could allow fishery participants to minimize *Illex* escapement by shifting effort to later in the year, when larger squid would have an increased retention rate.

Lastly, Amendment 10 considered establishing GRAs to reduce butterfish discards in MSB fisheries. The action alternatives included four GRAs, to be effective during January–April, that varied by minimum codend mesh size requirements (*i.e.,* 3 inches (76 mm) or 3¾ inches (96 mm)) and effective area (*i.e.,* area accounting for 50 percent or 90 percent of MSB discards). Because the GRAs are limited in temporal and geographic scope, the Council concluded they were not a viable solution to butterfish discarding in MSB fisheries and did not recommend establishing butterfish GRAs (no action alternative). Establishing GRAs would likely have resulted in shifts in the distribution of fishing effort with biological effects that would be difficult to predict. Based on average annual revenue from trips that would be affected by GRAs, potential economic effects associated with the action alternatives per vessel ranged from revenue losses of $498,000–$559,000. However, given that fishing vessels are flexible in their fishing practices, these losses would most likely not be fully realized.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0601. Public reporting burden for the phone call to declare a *Loligo* fishing trip is estimated to average 2 min per call per trip, and public burden for the phone call to cancel a *Loligo* trip is estimated to average 1 min. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 5, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 648 are amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding an entry for § 648.26 to read as follows:

§ 902.1 OMB control number assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.26	–0601
* * * * *	

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.13, paragraph (a) is revised to read as follows:

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish moratorium or *Illex* moratorium permit under § 648.4(a)(5) and vessels issued a squid/butterfish incidental catch permit and authorized in writing by the Regional Administrator to do so, may transfer or attempt to transfer or receive *Loligo, Illex,* or butterfish.

* * * * *

■ 5. In § 648.14, paragraph (g)(1)(iii) is added and paragraph (g)(2)(ii)(C) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(1) * * *

(iii) *Observer requirements for Loligo fishery.* Fail to comply with any of the provisions specified in § 648.26.

* * * * *

(2) * * *

(ii) * * *

(C) Take, retain, possess or land mackerel, squid, or butterfish in excess of a possession allowance specified in § 648.25.

* * * * *

■ 6. In § 648.21, paragraphs (a)(2) and (f)(1) are revised, and paragraphs (b)(3)(iii) and (b)(3)(iv) are added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(a) * * *

(2) IOY, including RQ, DAH, DAP, butterfish mortality cap for the *Loligo* fishery, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish, which, subject to annual review, may be specified for a period of up to 3 years;

* * * * *

(b) * * *

(3) * * *

(iii) The butterfish mortality cap will be allocated to the *Loligo* fishery as follows: Trimester I—65 percent; Trimester II—3.3 percent; and Trimester III—31.7 percent.

(iv) Any underages of the butterfish mortality cap for Trimesters I or II will be applied to Trimester III of the same year, and any overages of the butterfish mortality cap for Trimesters I and II will be applied to Trimester III of the same year.

* * * * *

(f) * * *

(1) A commercial quota will be allocated annually for *Loligo* squid into trimester periods based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

* * * * *

■ 7. In § 648.22, paragraph (a)(5) is added to read as follows:

§ 648.22 Closure of the fishery.

(a) * * *

(5) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 80 percent of the butterfish mortality cap is harvested in Trimester I and/or 90 percent of the butterfish mortality cap is harvested in Trimester III.

* * * * *

■ 8. In § 648.23, paragraphs (a)(3) introductory text and (a)(3)(i) are revised to read as follows:

§ 648.23 Gear restrictions.

(a) * * *

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2⅛ inches (54 mm), during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm), during Trimester II (May–Aug), diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2⅛ inches (54 mm), during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm), during Trimester II (May–Aug), diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4½ inches (11.43 cm) diamond mesh, inside stretch measure. For the purposes of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

* * * * *

■ 9. In § 648.25, paragraph (a) is revised to read as follows:

§ 648.25 Possession restrictions.

(a) *Atlantic mackerel.* During a closure of the directed Atlantic mackerel fishery that occurs prior to June 1, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for mackerel that occurs on or after June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day.

* * * * *

■ 10. Section 648.26 is added to subpart B to read as follows:

§ 648.26 Observer requirements for the Loligo fishery.

(a) A vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr prior to beginning any fishing trip, unless it complies with the possession

restrictions in paragraph (c) of this section.

(b) A vessel that has a representative provide notification to NMFS as described in paragraph (a) of this section may only embark on a *Loligo* trip without an observer if a vessel representative has been notified that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specified *Loligo* trip, within 24 hr of the vessel representative's notification of the prospective *Loligo* trip, as specified by paragraph (a) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the *Loligo* trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing *Loligo* except as specified in paragraph (c) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(c) A vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing 2,500 lb (1.13 mt) or more of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), intends to possess, harvest, or land 2,500 lb (1.13 mt) or more of *Loligo* per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number for contact, and the intended date, time, and port of departure for the cancelled trip within 72 hr of the initial notification. In addition, if a trip selected for observer coverage is canceled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

[FR Doc. 2010–5184 Filed 3–10–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2010–N–0002]

New Animal Drugs for Use in Animal Feeds; Zilpaterol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of three abbreviated new animal drug applications (ANADAs) filed by Ivy Laboratories, Div. of Ivy Animal Health, Inc. The ANADAs provides for use of single-ingredient Type A medicated articles containing zilpaterol, melengestrol, monensin, and tylosin to make two-way, three-way, and four-way combination drug Type B and Type C medicated feeds for heifers fed in confinement for slaughter.

DATES: This rule is effective March 11, 2010.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Div. of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–483 for use of ZILMAX (zilpaterol hydrochloride) and HEIFERMAX 500 (melengestrol acetate) Liquid Premix single-ingredient Type A medicated articles to make dry and liquid, two way combination drug Type B and Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200–483 is approved as a generic copy of Intervet, Inc.'s combination medicated feed use of ZILMAX and MGA 500 (melengestrol acetate), approved under NADA 141–284.

Ivy Laboratories also filed ANADA 200–479 for use of ZILMAX, HEIFERMAX 500 Liquid Premix, and RUMENSIN (monensin USP) single-ingredient Type A medicated articles to make dry and liquid, three-way combination drug Type B and Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200–479 is approved as a generic copy of Intervet, Inc.'s combination medicated feed use of ZILMAX, MGA 500, and RUMENSIN, approved under NADA 141–282.

Ivy Laboratories also filed ANADA 200–480 for use of ZILMAX, HEIFERMAX 500 Liquid Premix, RUMENSIN, and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles to make dry and liquid, four-way combination drug Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200–480 is approved as a generic copy of Intervet, Inc.'s combination medicated feed use of ZILMAX, MGA 500, RUMENSIN, and TYLAN, approved under NADA 141–280.

The abbreviated applications are approved as of December 30, 2009, and the regulations are amended in 21 CFR 558.665 to reflect the approval.

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

The agency has determined under 21 CFR 25.33 that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.665 [Amended]

■ 2. In § 558.665, in the table in paragraphs (e)(2), (e)(4), and (e)(6), in the "Limitations" column remove "No. 000009" and add in its place "Nos. 000009 or 021641" and in the "Sponsor"

column add in numerical sequence "021641".

Dated: March 8, 2010.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2010–5224 Filed 3–10–10; 8:45 am]

BILLING CODE 4160–01–S

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

Docket No. MC2009–19; Order No. 391

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding special postal services to the product lists. This action is consistent with changes in a postal reform law. Republication of the product lists is also consistent with a statutory provision. The Commission also has prepared a supporting library reference.

DATES: Effective March 11, 2010 and is applicable beginning January 13, 2010.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6824 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 15784 (April 7, 2009).

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I. Introduction and Summary

In Docket No. MC2008–1, the Commission found that six previously stated unclassified services were postal services.[1] It directed the Postal Service to make an appropriate filing to add those services to the Mail Classification Schedule (MCS) product lists. In this proceeding, the Postal Service seeks to add seven postal services to the product lists. Based upon a review of the record, the Commission approves the addition of two products to the Market Dominant Product List and five products to the Competitive Product List as follows: Market Dominant Product List: Address Management Services (to replace Address List Services) and Customized Postage and [to the] Competitive Product List: Address Enhancement Service; Greeting Cards and Stationery; Shipping and Mailing Supplies; and International Money Transfer Service-Outbound and International Money Transfer Service-Inbound (to replace International Money Transfer Service).

The Commission also confirms its finding in Order No. 154 that Stamp Fulfillment Services is a postal product and directs the Postal Service to make an appropriate filing within 60 days to add Stamp Fulfillment Services to the MCS.

In addition, the Commission revises the draft MCS product descriptions for Greeting Cards and Stationery and for Shipping and Mailing Supplies. Product descriptions for these and other services covered by the Postal Service's request in this proceeding are set forth in a PRC Library Reference being filed in this docket. PRC-MC2009–19–LR1. Subject to further possible modifications, these product descriptions are to be incorporated into the draft MCS at the time of its future publication. Finally, the Commission directs that the Postal Service file draft product descriptions for eight existing items that are to be included in Address Management Services.

II. Procedural History

Background. In Order No. 154, the Commission ruled that six previously unclassified services were postal services. Those six services were Address Management Services; Customized Postage; Stamp Fulfillment Services; Greeting Cards; ReadyPost; and International Money Transfer Service. Because the Postal Service had not complied with the requirements of 39 U.S.C. 3642(d) and 39 CFR 3020.30 *et seq.* the Commission did not address whether these six services should be added to the MCS product lists. Instead, the Commission classified each of these services as either a market dominant or competitive product pending the outcome of classification proceedings that the Commission directed the Postal Service to institute within 60 days. *Id.* at 27–29, 89.

Postal Service Requests. On March 10, 2009, the Postal Service filed a request to add seven products to the MCS product lists: Address Management Services; Customized Postage; Address Enhancement Service; Greeting Cards, Stationery, and Related Items; Shipping and Mailing Supplies; International Money Transfer Service-Inbound; and International Money Transfer Service-Outbound.[2]

One of the six products classified as a postal service by Order No. 154, Stamp Fulfillment Services, was intentionally omitted from the March 10, 2009 filing. That omission was based upon the Postal Service's view that Stamp Fulfillment Services was no longer a postal service because of planned modifications to the service.

Of the remaining five services classified as postal services by Order No. 154, two, Address Management Services (AMS) and International Money Transfer Service, were split into narrower services. Address Management Services was subdivided into a market dominant product called "Address Management Services" and a competitive product, "Address Enhancement Service." International Money Transfer Service was separated into an inbound service, "International Money Transfer Service-Inbound" and an outbound service, "International Money Transfer Service-Outbound."[3] As a result of the foregoing changes, the March 10, 2009 filing proposed the addition of seven products to the MCS product lists in place of the six products discussed in Order No. 154.

Commission Order No. 198 provided formal notice of the Request, established the captioned docket to consider the Request, appointed an officer of the Commission to represent the interests of the general public, and set April 30, 2009 as the deadline for comments.[4]

Thereafter, on May 8, 2009, the Postal Service filed a notice of an amendment to its March 10, 2009 filing.[5] The amendment was made to reflect the manner in which one of the components of Address Management Services would be offered.[6] Commission Order No. 215

[1] Docket No. MC2008–1, Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, December 19, 2008, at 27–38, 63–64 and Appendix 1 (Order No. 154). Order No. 154 was issued in proceedings instituted to fulfill the Commission's responsibilities under 39 U.S.C. 404(e)(3) to determine which services offered by the Postal Service were nonpostal services and which, if any, of those nonpostal services should be continued.

[2] Request of the United States Postal Service to Add Postal Products to the Mail Classification Schedule in Response to Order No. 154, March 10, 2009 (Request).

[3] Supplemental information regarding International Money Transfer Service-Inbound and International Money Transfer Service-Outbound was subsequently provided by the Postal Service. *See* Supplemental Response of the United States Postal Service to Order No. 154, July 15, 2009.

[4] PRC Order No. 198, Notice and Order Concerning Request to Add Seven Postal Services to the Mail Classification Schedule Product Lists, March 30, 2009 (Order No. 198).

[5] Notice of the United States Postal Service of Amendment to Its Request to Add Postal Products to the Mail Classification Schedule in Response to Order No. 154, May 8, 2009 (Amended Request).

[6] More specifically, two services previously offered as stand-alone components of Address Management Services (*i.e., FASTforward MLOCR* service and *FASTforward Move Update Notification*) were being combined under the name *FASTforward MLOCR* service. The charge for *FASTforward MLOCR* service remained unchanged and there was no longer to be a separate charge for *FASTforward Move Update Notification* service.

was issued on May 12, 2009, providing formal notice of the Amended Request and allowing additional comments.[7]

Comments. The following parties filed comments in response to Order No. 198 and Order No. 215: the National Association of Retail Ship Centers (NARSC); United Parcel Service (UPS); Associated Mail and Parcel Centers (AMPC); and the Public Representative.[8] The points raised in their respective comments are addressed in section III., Commission Analysis, below.

Chairman's information requests. On May 21, 2009, the Chairman issued an information request to the Postal Service.[9] The Postal Service submitted its response on May 29, 2009.[10] Thereafter, on August 5, 2009, the Chairman issued a second information request,[11] to which the Postal Service responded on August 13, 2009.[12]

Additional comments. Following the Postal Service's filing of its response to CHIR No. 1, a series of additional comments and responses were filed by several parties: the Public Representative; the Greeting Card Association (GCA); NARSC; and the Postal Service.[13] While the rules of practice do not provide for such filings, the Commission will accept each of these filings in order to ensure that all arguments and comments of the participants are considered.[14] A discussion of the points raised in these comments can be found in section III., Commission Analysis, below.

III. Commission Analysis

The Postal Service requests the addition of seven services to the product lists specified in the MCS. For the reasons given below, the Commission concludes that the following seven postal services should be included in the MCS and, as appropriate, be added to the product lists: Address Management Services; Customized Postage; Address Enhancement Service; Greeting Cards and Stationery; Shipping and Mailing Supplies; International Money Transfer Services-Outbound; and International Money Transfer Services-Inbound. For the reasons given below, the Postal Service is directed to make an appropriate filing within 60 days to add Stamp Fulfillment Services to the Market Dominant Product List.

A. Market Dominant Products

1. Address Management Services

Address Management Services (AMS) is the new name given by the Postal Service to the market dominant product previously called "Address List Services". *See* Request, Attachment A, at 1. Address List Services (ALS) was added to the MCS product lists by Order No. 43 and contained only four services.[15] As amended, the Postal Service's Request in this proceeding would increase the number of services from 4 to 27.[16] The AMS product consists of a number of value-added services that enable bulk business mailers to better manage the quality of their mailing lists. The AMS product also includes diagnostic and other services that evaluate address management software for accuracy.[17]

No party opposes adding Address Management Services to the Market Dominant Product List within the Special Services class. Request at 2, n.3. However, in his initial and supplemental comments, the Public Representative observes that the Postal Service's Request fails to provide an adequate discussion of statutory factors and objectives.[18] *Id.* The Postal Service responds by providing a more complete discussion of the following objectives and factors: Objective No. 1 (maximization of incentives to reduce costs and increase efficiency); Objective No. 3 (maintenance of high quality service standards established under section 3691); Factor No. 5 (the degree of mail preparation by mailers for delivery into the postal system and its effect on cost reduction); and Factor No. 12 (the need to increase efficiency, reduce costs, and maintain high quality, affordable services). Response to CHIR No. 1, Question 4. Upon consideration of the information provided in the Request and in the subsequent response to CHIR No. 1, the Commission concludes that the AMS product should be added to the Market Dominant Product List.

The Public Representative also questions whether the changes proposed in the Amended Request to *FASTforward MLOCR* and *FASTforward Move Update Notification* constitute a rate change requiring prior notice and compliance with other applicable provisions of 39 CFR part 3010. Public Representative Supplemental Comments at 2–3. Alternatively, the Public Representative acknowledges that the Amended Request could be construed as a proposal to add new products to the Market Dominant Product List and that

[7] PRC Order No. 215, Notice and Order Concerning Amendment to Request to Add Seven Postal Services to the Mail Classification Schedule Product Lists, May 12, 2009 (Order No. 215).

[8] Comments of National Association of Retail Ship Centers, April 30, 2009 (NARSC Comments); Comments of United Parcel Service in Response to Notice and Order Concerning Request to Add Seven Postal Services to the Mail Classification Schedule Product Lists, April 30, 2009 (UPS Comments); Comments of Associated Mail and Parcel Centers, May 1, 2009 (AMPC Comments); Comments of the Public Representative, April 30, 2009 (Public Representative Comments); and Supplemental Comments of the Public Representative in Response to Commission Order No. 215, May 19, 2009 (Public Representative Supplemental Comments).

[9] Chairman's Information Request No. 1, May 21, 2009 (CHIR No. 1).

[10] Responses of the United States Postal Service to Chairman's Information Request No. 1, May 29, 2009 (Response to CHIR No. 1).

[11] Chairman's Information Request No. 2, August 5, 2009 (CHIR No. 2).

[12] Responses of the United States Postal Service to Chairman's Information Request No. 2, August 13, 2009 (Response to CHIR No. 2).

[13] Comments of the Public Representative on the Postal Service's Legal Authority to Set Fees for Postal Services Without Commission Approval, June 9, 2009 (Public Representative Additional Comments); Comments of the Greeting Card Association, May 29, 2009 (GCA Comments); Response of the United States Postal Service to Intervenor and Public Representative Comments, June 11, 2009 (Postal Service Reply Comments); and Comments of National Association of Retail Ship Centers, June 17, 2009 (NARSC Additional Comments).

[14] Two of the parties, GCA and the Public Representative, sought leave to file these additional comments. *See* GCA Motion for Leave to Submit Comments Out of Time, May 29, 2009; and Motion for Leave to File Comments on the Postal Service's Legal Authority to Set Fees for Postal Services Without Commission Approval, June 9, 2009. These motions are granted. With respect to the remaining filings, the Commission is persuaded that the additional information provided by these filings will clarify the record. Accordingly, these additional submissions are accepted for filing. The parties are, however, cautioned that failure to seek leave to file future untimely submissions, or submissions not otherwise authorized by the rules of practice, may result in their rejection.

[15] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43). Those services were Correction of Address Lists; Change-of-Address Information for Election Boards and Registration Commissions; ZIP Code Sortation of Address Lists; and Address Sequencing. *See also* Docket No. RM2007–1, United States Postal Service Submission of Initial Mail Classification Schedule in Response to Order No. 26, September 24, 2007, Appendix at 79.

[16] *Compare* Request, Attachment A, at 1–12 (AMS Product Descriptions) *with* Amended Request at 1–2 (incorporation of *FASTforward* Move Update Notice (FFMUN) into *FASTforward* MLOCR).

[17] Address Management Services differs from the competitive product, Address Enhancement Service, discussed, *infra*. Whereas Address Management Services consists of address update services and address data files originated by the Postal Service, such as ZIPCode + 4 data, the competitive product, Address Enhancement Service, consists of three address matching services that compete with services provided by private address management software developers.

[18] The Public Representative also commented on the absence of any financial information for the Address Management Services product. Public Representative Comments at 5–6; and Public Representative Supplemental Comments at 4. Historically, the Postal Service has not been required to produce detailed cost data for AMS. Consequently, financial information for this product does not exist. However, by adding the Address Management Services product to the MCS, the Postal Service will be required to develop a cost methodology for this product. *See* section III.B., Reporting Procedures for Approved Market Dominant Products, *infra,* or a discussion on reporting financial information for this product.

without approved rates in effect, the Amended Request would not, by definition, produce a rate change. *Id.* Under the unique circumstances presented in this case, the Commission finds the latter characterization more persuasive and that the Amended Request does not present a rate change proposal.

Finally, the Public Representative asserts that the Postal Service has failed to include additional value-added services in its Request. Public Representative Comments at 6–7. The services referred to by the Public Representative are: Advance Notification and Tracking System; MAC Batch System Certification; MAC Gold System Certification; MAC System Certification; Mailpiece Quality Control Certification; PAGE System Certification; PAVE System Certification; and Z4INFO. The Public Representative argues that all "postal services" must be listed in the MCS under a particular product, and that it appears the Postal Service is attempting to set fees for "postal services" without Commission review and approval. Public Representative Additional Comments at 2–3.

The Postal Service argues that the omission from its Request of the services at issue is not an attempt to take advantage of a regulatory "no man's land" by offering services not included in the MCS, as alleged by the Public Representative. Response to CHIR No. 1, Question 2; and Postal Service Reply Comments at 10. The Postal Service agrees that these value-added services are, in fact, postal services, but explains that these services are designed to "minimize, rather than maximize" revenue and thus, do not necessarily need to be added to the MCS. Response to CHIR No.1, Question 2(b). The Postal Service further argues that the Commission has the authority to "forbear" from regulating these services as "products" and thereby omit these services from the MCS.[19] *Id.;* and Postal Service Reply Comments at 10–12. In lieu of adding the services to the MCS, the Postal Service offers to provide the Commission with annual fee and revenue information on these services with the understanding that the Commission might, in the future, decide to regulate these services as "products" if the information provided by the Postal Service were to suggest that such regulation were necessary. CHIR No.1, Question No. 2(b). In total, AMS will include 36 services.

As the Postal Service recognizes, Congress has given the Commission jurisdiction over the postal services at issue. While the Postal Service asserts that the Commission has the authority to "forbear" from exercising that jurisdiction, it cites no clear legal authority for exercising such forbearance. Instead, the Postal Service advances several policy arguments to support the reasonableness of forbearance.[20]

The Commission is not persuaded by these policy arguments. Without clear authority to forbear from exercising jurisdiction, the Commission will follow its jurisdictional mandate from Congress and direct that these services be added to the Market Dominant Product List as elements of Address Management Services. In addition, the Postal Service will be required to file draft MCS language within 30 days of the date of this order for those services.[21]

While the Commission is legally obligated to exercise its jurisdiction, it also possesses discretionary authority to determine how that jurisdiction will be exercised. Given the small and intermittent revenues produced by these services and the current lack of reliable costing methodologies, the Commission will not subject them to the full range of regulatory review. Instead, the Commission will require only that the Postal Service report fee and revenue information (if any) for those services annually as part of its Annual Compliance Report. The information to be filed shall be in a form similar to Appendix A to Docket No. MC2008–1, Response of the United States Postal Service to PostCom *et al.* Motion to Sever From This Proceeding the Consideration of Those Previously Unregulated Services That the Postal Service Asserts are "Postal Services," December 12, 2008.[22] If the need for more extensive regulatory reporting becomes apparent, the Commission may revisit the issue.

2. Customized Postage

The Postal Service proposes to add the Customized Postage program to the Market Dominant Product List as a stand-alone Special Services product. The Customized Postage program authorizes vendors to provide their customers with Postal Service authorized postage consisting of customer-selected images. There are currently four vendors participating in the Customized Postage program.[23]

No party objects to adding Customized Postage to the Market Dominant Product List. However, the Public Representative observes that the Postal Service's Request provided only a minimal discussion as to how the proposed Customized Postage product achieved the objectives of 39 U.S.C. 3622(b), while taking into account the factors of 39 U.S.C. 3622(c). Public Representative Comments at 4–5. In its response to CHIR No. 1, the Postal Service provided a more complete discussion of the following objectives and factors: Objective No. 2 (rate predictability and stability) and Objective No. 5 (assurance of adequate revenues to maintain financial stability); and Factor No. 8 (relative value to the people of the kinds of mail matter and the desirability and justification for special mail classifications). Response to CHIR No. 1, Question 4.

Upon review of the information submitted, the Commission concludes that the Customized Postage program satisfies the requirements of sections 3622(b) and (c). The Commission, therefore, approves the addition of the Customized Postage program to the Market Dominant Product List.

3. Stamp Fulfillment Services

Stamp Fulfillment Services (SFS) provide shipping and handling for all orders placed with the Stamp Fulfillment Services office in Kansas City, Missouri. Orders for postage stamps, personalized stamped envelopes, and philatelic sales can be placed by fax, mail, online, or telephone; orders for Officially Licensed Retail Products (OLRP) can be placed

[19] Initially, the Postal Service argued that the "postal services" were "postal activities" that were designed to "minimize, rather than maximize" revenue and, as such, did not need to be added to the MCS. *See id.*

[20] *See* Response to CHIR No.1, Questions 2 and 3; and Postal Service Reply Comments at 10–12.

[21] The Commission rejects the Public Representative's suggestion that the Postal Service be required "to provide a full accounting of all 'postal services' not listed on the draft MCS." Public Representative Additional Comments at 2. In Order No. 154 at 35, the Commission recognized that "it is possible for something to be inadvertently omitted when attempting to compile a complete list of activities ... [and that] ... any omitted activities can be explored in the next phase of this case." *See* Docket No. MC2008–1, Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, December 19, 2008 (Order No. 154). Accordingly, in instituting Phase II of the proceedings in Docket No. MC2008–1, the Commission directed the Postal Service to file a sworn statement providing "details of each retail program for which information may have been inadvertently omitted in response to Order No. 74 and which the Postal Service seeks to have classified as a postal service or, alternatively, to continue to offer as a nonpostal service." Docket No. MC2008–1 (Phase II), Notice and Order Initiating Phase II Proceedings, January 9, 2009, at 4. The Postal Service made no such filing in that proceeding. Thus, the Commission views the record as complete in that regard.

[22] The Postal Service has stated its willingness to provide information in this form. Response to CHIR No. 1, Question 2.

[23] *See www.usps.com* for information on the respective vendors (keyword search: Customized Postage).

only online.[24] Currently, the Postal Service imposes a $1.00 charge for fulfilling postage stamp, philatelic, and stamped envelope orders. *Id.* at 10. The Postal Service maintains that the $1.00 charge "is more like a handling charge intended to recover SFS costs for preparing orders for shipment, rather than shipping costs." *Id.* at 11. For personalized stamped envelopes, the Postal Service also imposes an additional and higher shipping and handling charge.

In its Request, the Postal Service states that it "is not requesting the addition of SFS to the MCS." *Id.* at 10. Instead, it plans to eliminate the $1.00 handling charge and implement an alternative fee structure for shipping. In doing so, the Postal Service argues that the alternative fee structure, which would utilize existing postage prices, eliminates the justification for adding SFS to the MCS. *Id.* at 12–13.

In conceptual terms, the Postal Service's alternative fee structure would "recover postage for SFS shipments directly, while recovering handling costs through the prices charged for the items." *Id.* at 11. The Postal Service proposes this alternative pricing structure because customers who mail or fax their SFS orders often find it difficult to calculate the zone and weight for their orders, particularly larger orders, using the existing fee schedules. Thus, the Postal Service wants to ensure that customers can "readily determine and pay the total charge for an order, including shipping, at the time the order is placed." *Id.* at 12.

The Postal Service offers several examples to illustrate how an alternative fee structure might work. *Id.* The four examples reference existing market dominant and competitive postage prices, *i.e.,* First-Class Mail and Priority Mail prices, as shipping charges for hypothetical SFS orders. However, the Postal Service states that the shipping charge for any particular SFS order:

> would not always be the actual postage that would otherwise be charged based on the zone and weight for the mail piece being shipped. Instead, existing postage prices will be selected, for application to shipments that fall within specified parameters.

Id. The Postal Service states that it is "still working on the specific postage prices that it will charge for shipments, but plans to complete the process soon." *Id.* at 13.

The Postal Service's alternative pricing structure for shipping SFS orders raises concerns. More specifically, the Public Representative states that the four examples provided by the Postal Service "imply that there are situations where the Postal Service is altering the ordinary tariff rate postage for SFS orders." Public Representative Comments at 15. The Public Representative further states that if the Postal Service's alternative pricing structure for SFS orders alters the ordinary tariff rate then "the Postal Service should be required to add this product to the Market Dominant Product List and to obtain Commission approval for these special rates for SFS services." *Id.*

Additionally, in Order No. 154, the Commission determined that "handling and shipping fees associated with stamp purchases and personalized stamped envelopes represent fees for postal services."[25] (Order No. 154 at 63, emphasis added.) The planned elimination of the handling charge would address only one of the bases for requiring the addition of SFS to the MCS product list. The Postal Service's proposed use of "alternative" shipping fees would still require the Commission to classify SFS as a market dominant postal product since, as the Public Representative points out the four pricing examples offered by the Postal Service suggest that "the Postal Service will not be charging tariff rates for certain fulfillment orders ... ." *Id.* at 15. Rather, the Postal Service intends to use rates from a tariff schedule that are weight- and distance-related and apply those rates as shipping charges without regard to the weight of the item or the zone to which it is actually being sent.[26] *Id.*

The Commission is sensitive to the Postal Service's efforts to improve the ordering process for customers, particularly for mail and fax customers. A simplified fee structure derived from existing tariff rates could achieve the result the Postal Service desires. The Postal Service can, if it desires, propose simplified SFS shipping prices. In doing so, the Postal Service has an opportunity to develop simplified pricing for shipping of SFS orders that improves the likelihood customers will complete the ordering process and increase postal revenues. Should the Postal Service propose the use of simplified shipping fees as an alternative to tariff postage that would, of course, itself require the Postal Service to file an appropriate request to add SFS to the MCS product lists. Pending receipt of any such proposal, the Commission reaffirms its findings in Order No. 154, and the Postal Service is authorized to continue to charge a $1.00 handling fee. The continued collection of the handling fee, however, requires the filing of a request to add SFS to the Market Dominant Product List. That filing is due within 60 days from the date of this order.

B. Reporting Procedures for Approved Market Dominant Products

With the exception of the eight Address Management Services which the Postal Service is directed to add to the MCS as elements of Address Management Services (section III.A.1, Address Management Services, supra), the Commission expects the Postal Service to submit cost, revenue, and volume data at the product level for all remaining market dominant products. Previously, the Postal Service has not reported detailed cost data for Address Management Services, Customized Postage, and Stamp Fulfillment Services. Cost methodologies were not developed for these services, and the Commission recognizes that the existing data systems may not provide adequate cost, revenue, and volume data for many of the separate services within certain products such as Address Management Services. The Postal Service is currently "reviewing all its internal reporting systems consistent with its plans to collect and report cost, revenue, and volume data in the next [Annual Compliance Report]...." Response to CHIR No. 1, Question 3. The Postal Service further states that "cost methodologies will be developed (and submitted to the Commission for prior review) to generate additional information." *Id.* The Commission expects the Postal Service to report on the status of its efforts prior to the next Annual Compliance Report.

C. Competitive Products

1. Address Enhancement Service

The Postal Service proposes to add Address Enhancement Service (AES) to the Competitive Product List as a stand-alone product.[27] Address Enhancement

[24] Request at 12, n.13. The use of customized software enables online OLRP orders to be "shipped at [the] actual postage rates for the zone and weight of the shipment. Such an approach would not be workable for mail and fax orders." *Id.* Consequently, shipping prices for OLRP orders are not at issue in this proceeding.

[25] In making this determination, the Commission observed that if fees for handling and shipping services "were incurred solely in connection with philatelic sales, classifying such services as nonpostal would be reasonable." *Id.* However, the Commission found that the Postal Service "often can not distinguish philatelic from regular stamp purchases ... " *citing* the Initial Response of the United States Postal Service to Order No. 74, June 9, 2008, at 14. *Id.*

[26] This selective use of rates published in a tariff schedule does not constitute the application of tariff rates as those rates were intended to be applied.

[27] The Address Enhancement Service product is different from the market dominant Address Management Services product. For a more detailed discussion of Address Management Services, *see* section III.A.1., Address Management Services, supra.

Service is the name given to several separate services: Address Element Correction (AEC), Address Matching System Application Program Interface (AMS API), and Topographical Integrated Geographic Encoding and Referencing (TIGER/ZIP + 4). Each service is designed around one or more software packages that improve address quality and reduce undeliverable-as-addressed mail.

In its Request, the Postal Service proposes MCS language that contains descriptions and prices for each of the separate services within the proposed Address Enhancement Service product. The Postal Service's Request also provides a Statement of Justification that includes confidential FY 2008 cost and revenue figures that were filed under seal for the proposed product. In response to CHIR No. 1, the Postal Service supplemented its Request with supporting financial worksheets that were also filed under seal. Response to CHIR No. 1, Question 1.

The Public Representative raised concerns regarding the AMS API service, contending that it appears to be a bundle of six market dominant Address Management Services databases that could potentially be priced anti-competitively, *i.e.,* at less than the sum of the prices for each database in the bundle. Public Representative Comments at 13. If priced in this way, the Public Representative alleges "there would be no meaningful competition since a competitor could not purchase the individual unbundled market dominant products at a price that would allow it to repackage those services and compete with the Postal Service's competitive bundled service on price." *ld.,* n.19.

In response to the Public Representative's comments, the Postal Service further describes the features of the AMS API service and its proposed pricing. Postal Service Reply Comments at 6. According to the Postal Service, the AMS API service is not merely six bundled market dominant Address Management databases. −The AMS API service provides a "core set of compiled address-matching software instructions (computer code), developed by the Postal Service" that interpret data from the six market dominant Address Management databases.[28] *Id.* at 5. The AMS API address-matching software package is offered to address management vendors to incorporate in and thereby enhance their Address Management software when applied to the data from the market dominant databases. *Id.*

The Postal Service also explains that the price for AMS API is greater than the sum of the prices for the six market dominant databases combined. Address Management software vendors who want to incorporate AMS API into their own Address Management software must pay a reseller license fee of $16,700, as well as separate annual fees for additional licenses in order to distribute the databases to multiple customers along with their software. Consequently, the reseller license fee plus the annual fees for additional database licenses are greater than the sum of the individual price of each of the six market dominant databases. *Id.* The Postal Service has submitted revised MCS language to clarify the pricing of the AMS API service. *See id.* at 6.

The Commission approves the addition of Address Enhancement Service to the Competitive Product List based upon the revised MCS language provided by the Postal Service. The Postal Service's further explanation of the AMS API service and the six market dominant Address Management databases clarifies that the price relationships would not have an anti-competitive effect.

2. Greeting Cards and Stationery

In Order No. 154, the Commission concluded that the sale of greeting cards and stationery (Greeting Cards) was a postal service and directed the Postal Service to file a request to add Greeting Cards to the MCS. Order No. 154 at 89.[29] In Attachment A to its Request, the Postal Service proposes the following classification language:

2XXX Greeting Cards, Stationery, and Related Items

2XXX.1 Description

Greeting Cards, Stationery, and Related Items include items designed to be used to mail personal messages.

Greeting cards—Greeting cards include cards with envelopesand may be sold individually or as sets.

Stationery—Stationery includes paper, envelopes, postcards, note cards, and note pads and are sometimes packaged as sets[.]

Parties' comments. NARSC objects to any and all retail sales of greeting cards, stationery, and related items by the Postal Service on several grounds, including the following: that these products are nonpostal products; that the Postal Service enjoys a competitive advantage due to its size, purchasing power, and exemption from local sales tax laws; that the addition of 32,000 Postal Service retail outlets to the existing 64,000 retail outlets of private firms would overburden an already crowded marketplace; that the Postal Service has failed to document projected expenses and revenues; and that the sale of such items will interfere with the performance of core Postal Service responsibilities. *See* NARSC Comments and NARSC Additional Comments.

AMPC takes issue with the scope of the "Greeting Card" description in the Postal Service's proposed MCS language, alleging that the sale of a full line of greeting cards would constitute a nonpostal service and should be precluded. *See* AMPC Comments. Instead, AMPC requests that the definition of "greeting cards" in the MCS be limited to "those cards which relate directly to specific stamps or Official Licensed Retail Product programs." *Id.*

The Public Representative supports adding Greeting Cards, Stationery, and Related Items to the MCS as a competitive product, subject to certain limitations. Public Representative Comments at 10. First, the Public Representative notes that the term "Related Items" had no definition and that it should either be defined or excluded from the MCS. *Id.,* n.12. Second, the Public Representative submits that the availability of all of these items should be limited to postal retail locations. *Id.* at 10–11. Third, the Public Representative takes the position that the Postal Service should be required to provide adequate financial data to support the addition of these products to the MCS, or should be required to incorporate into the MCS its pricing policies with respect to these items. *Id.* at 11–12.

In its June 11, 2009 response to the comments of NARSC, AMPC, and the Public Representative, the Postal Service argues that the Commission already found greeting cards and stationery to be postal services in Order No. 154; these products will be a valuable addition to the market; the sale of these products is not a "non-core" activity; all greeting cards, not just postal themed cards, foster use of the mails; and the fact that the sales of these products will compete with sales by others does not provide a basis for rejecting the proposed addition of these products to the Competitive Product

[28] AMS API includes the following six market dominant databases within the Address Management Services product: City State, Delivery Point Validation, eLot, LACS^{Link}, Five-Digit ZIP, and ZIP+4.

[29] The Commission's ruling in ordering paragraph 1 refers solely to "Greeting Cards." However, it is clear from the Commission's discussion of the greeting card status issue that the Commission used the term "Greeting Cards" to refer not only to greeting cards, *per se*, but to other stationery items. *Id.* at 34–35. One of the purposes of the instant proceeding is to determine the appropriate scope of the product.

List. Postal Service Reply Comments at 2–3. The Postal Service also takes issue with the Public Representative's proposal to prohibit the availability of greeting cards at nonpostal retail locations. *Id.* at 3–4. Notwithstanding this opposition to the Public Representative, the Postal Service suggests that the issue need not be decided at this time since the Postal Service's current plan is to offer greeting card products only through Postal Service retail channels. *Id.* at 4.

On May 29, 2009, GCA filed comments supporting the proposed addition of greeting cards, stationery, and related items to the MCS. GCA Comments at 2. GCA asserts that the proposal will benefit its members, consumers, and the Postal Service by giving consumers convenient and additional opportunities to purchase greeting cards that will be sent through the mail. *Id.* at 1. GCA claims that the effect of the Postal Service's proposal will be to increase the total use of greeting cards, not to simply reallocate greeting card sales among retail outlets. *Id.*[30]

Commission analysis. While the Postal Service is correct that Order No. 154 determined that greeting cards and stationery were postal services, the issue of whether to add them to the Competitive Product List was not before the Commission in that proceeding. The issue is now pending, and section 3642(b)(3) requires the Commission to give due consideration to "the availability and nature of enterprises in the private sector engaged in the delivery of the product involved' and to "the likely impact of the proposed action on small business concerns ...."

NARSC's argument that the Postal Service enjoys certain competitive advantages is countered, in part, by the Postal Service's response that it has been selling greeting cards and stationery as a part of its retail product mix for over a decade. Request, Attachment E, at 4. As NARSC itself points out, there are already other large retail outlets that sell greeting cards and stationery. NARSC Comments at 1. Against this history, NARSC's general allegations of harm are not persuasive, particularly, as discussed below, given the limitations imposed on the sale of such items. Furthermore, the Commission can not simply assume that sales of greeting cards and stationery by the Postal Service will necessarily decrease sales by other retailers, large or small. *See* GCA Comments at 1.

A related, but separate, aspect of NARSC's allegation of unfair competitive advantage relates to the Postal Service's pricing of greeting cards and stationery. NARSC suggests that in selling such items, the Postal Service may not have been recovering its costs. NARSC Comments at 1–2. In that connection, NARSC questions whether the Postal Service has adequately determined the costs attributable to the sale of these items. NARSC Additional Comments at 1. The Public Representative raises similar concerns, arguing that the Postal Service should either file adequate financial data to support the addition of greeting cards and stationery to the MCS, or alternatively, file a narrative description of its pricing policies. Public Representative Comments at 12.

The Postal Service argues that any danger that these items will not cover their costs or will unfairly compete in the marketplace has been eliminated because they are now subject to regulation by the Commission. Postal Service Reply Comments at 2. In that connection, the Postal Service states that its policy will, in general, be to price greeting cards and stationery with "at least a 50 percent mark-up over the wholesale price" and that as part of its effort to comply with the PAEA, it has already begun to track costs of greeting cards and stationery products.[31] Request, Attachment E, at 2. The Postal Service therefore believes that this product will be able to generate revenues that cover its attributable costs and will not undermine the contribution of competitive products to the coverage of institutional costs. *Id.* at 2–3. The Postal Service's contentions are supported by information provided under seal in response to CHIR No.1.[32] The information provided by the Postal Service convinces the Commission that the proposed sale of greeting cards and stationery is likely to cover attributable costs and should not undermine the ability of competitive products overall to contribute to the coverage of institutional costs.

AMPC suggests that the sale of greeting cards be limited to those "which relate directly to specific stamps or Official Licensed Retail Product programs." AMPC Comments. In Order 154, however, the Commission expressly recognized that not all greeting cards identified by the Postal Service in its response to Order No. 74 were directly related to specific stamps or OLRP programs, when it stated that "[i]ntellectual property, however, is not featured on every card." Order No. 154 at 34, n.72.

Nevertheless, AMPC is correct in stating that the activities determined to be postal services were those described by the Postal Service in its response to Order No. 74. *Id.* at 35. That response included a representation that the Postal Service had no plans to offer a full line of greeting cards. *Id.* at 34. By contrast, the Request in this proceeding includes the broadly worded MCS product description quoted above that could be read as encompassing a full line of greeting cards.

To obtain a more current statement of the Postal Service's intentions, CHIR No. 2 requested that the Postal Service provide information regarding its future plans to sell greeting cards. CHIR No. 2, Question 2(d).[33] In its response, the Postal Service describes the range of greeting card formats that it anticipates offering. Response to CHIR No. 2, Questions 2(a).[34] In addition, the Postal Service, once again, states that it does not intend to offer a full line of greeting cards. *Id.* This commitment confirms the Postal Service's previous position in Docket No. MC2008–1 and appears to be responsive to AMPC's concerns.

The Public Representative suggests that the sale of greeting cards and stationery be limited to retail postal locations. The Public Representative

[30] NARSC responded to GCA's comments by filing additional comments on June 17, 2009, in which it opposed Commission acceptance of GCA's comments because of their untimeliness; challenged the adequacy of the Postal Service's response to CHIR No.1 regarding costs and cost coverage; and elaborated further on the points raised in its initial comments. As stated in n.14, *supra,* and accompanying text, the Commission is granting GCA's motion for leave to file out of time and is accepting all additional comments not otherwise authorized by the Commission's rules of practice, including the NARSC Additional Comments.

[31] This cost information must be presented in the Postal Service's Annual Compliance Report as required by 39 U.S.C. 3652, and is reviewed by the Commission in issuing its Annual Compliance Determination, as required by 39 U.S.C. 3653.

[32] *See* library reference USPS-MC2009–19/NP–2, Nonpublic Supporting Materials Filed in Response to CHIR No.1, Relating to Competitive Products. This information was on file at the time the NARSC Additional Comments were filed. NARSC incorrectly states that the Postal Service failed to address the Commission's request for this information. NARSC Additional Comments at 1.

[33] CHIR No. 2 was prompted, in part, by a Postal Service solicitation issued as part of an investigation of the possibility of offering an expanded line of greeting cards. Federal Business Opportunities (FedBizOpps.com), Solicitation Number 2B–09–A–0018, posted May 21, 2009 (Solicitation).

[34] For example, the Postal Service states that it "does not intend to offer a 'full line' of greeting cards" and that a "full line" at standard greeting card stores " is "displayed on well over 200 linear feet of fixtures with additional space allocated for Stationery and Related items," whereas the Postal Service intends to provide "an average of 4–8 feet of display space" and that a "full line" of greeting cards "includes all seasonal cards and various specialty lines to target ethnic and geographic patterns," whereas the Postal Service could offer only "a very limited holiday selection" of cards.

states that the availability of these products at such retail locations was understood to be the basis on which Order No. 154 was issued. Public Representative Comments at 10–11. The Postal Service opposes the suggestion, but indicates that the issue need not be addressed because it has no plans to offer these items through any other retail channels and does not object to the limitation requested by the Public Representative. Postal Service Reply Comments at 4.

The Postal Service's proposed MCS language includes the term "Related Items." The term is not defined. The Public Representative objects to its inclusion in the MCS. Public Representative Comments at 10, n.12. In its response to CHIR No. 2, the Postal Service offers a possible definition of "Related Items," [35] but notes that it was "in the process of discontinuing all 'related items' in both retail channels [*i.e.,* retail lobbies and usps.com]." *Id.,* Question 1(b). The Postal Service also states that it "might offer boxed stationery or note cards to promote the use of First-Class Mail, but has not developed plans to do so at this time." *Id.,* Question 1(c). (Emphasis added.).

The Commission approves adding sales of Greeting Cards and Stationery to the Competitive Product List. However, the proposed draft MCS language will be revised to limit the availability of this product to retail postal locations and the Postal Service's Web site. In view of the uncertain status of, and future for, Related Items, it will not be included in the MCS at this time. If the Postal Service wishes to offer Related Items, it must make an appropriate filing with the Commission.

3. Shipping and Mailing Supplies

The Postal Service proposes to add Shipping and Mailing Supplies to the Competitive Product List as a stand-alone product. Shipping and Mailing Supplies consist of packaging materials that are used to package, seal, protect, and label items for mailing, including mailing cartons, specialty boxes, mailing tubes, mailing envelopes, a variety of packaging tapes, and other shipping accessories. Request, Attachment F, at 1. The Postal Service offers these packaging supplies through its retail channels. *See id.* at 1 and 4.

In Docket No. MC2008–1, the Commission reviewed the Postal Service's request to classify ReadyPost-a Postal Service-branded line of packaging supplies, as a postal service. Order No. 154 at 27. Based upon that review, the Commission found ReadyPost to be a postal service. *Id.* at 34. In this proceeding, however, the Postal Service combines ReadyPost with other packaging supplies to form Shipping and Mailing Supplies. Request, Attachment F, at 1.

With its Request in this proceeding, the Postal Service proposes MCS language that contains descriptions and prices for Shipping and Mailing Supplies. The Postal Service also provides a Statement of Justification that includes confidential FY 2008 cost and revenue figures that were filed under seal for the proposed product.

The Public Representative argues that the Request fails to include any financial information or spreadsheets to determine whether the new product complies with 39 U.S.C. 3633(a), 39 U.S.C. 3642(d)(1), or 39 CFR 3015.7. Public Representative Comments at 10–11. The Commission concludes, upon review, that the financial information concerning Shipping and Mailing Supplies, provided under seal in Response to CHIR No. 1, Question 1, satisfies the applicable statutory and regulatory requirements.

The Public Representative supports the addition of Shipping and Mailing Supplies to the Competitive Product List "with appropriate constraints." *Id.* at 10. In this regard, the Public Representative asserts that the Postal Service's proposed MCS language appears to permit the sale of Shipping and Mailing Supplies at retail locations other than postal retail locations, such as department stores and mass merchandisers. *Id.* The sale of Shipping and Mailing Supplies at other retail locations "does not foster the use of the mails and is not a 'function ancillary' " to the delivery of mailable matter. *Id.* at 10–11. Accordingly, the Public Representative argues that availability of Shipping and Mailing Supplies should be limited to postal retail locations and the Postal Service's Web sites. *Id.* at 11.

The Postal Service opposes this limitation, but suggests that this issue does not need to be decided in this docket. The Postal Service's "current plans with regard to the Shipping and Mailing Supplies product (as well as, incidentally, the Greeting Cards product), is to sell such materials through Postal Service retail channels." Postal Service Reply Comments at 4.

The Commission approves the addition of Shipping and Mailing Supplies to the Competitive Product List. However, the proposed MCS language does not accurately describe what the Postal Service is selling as Shipping and Mailing Supplies or in what retail channels. In this regard, "related material" offered for sale as shipping supplies and the sales channels in which Shipping and Mailing Supplies may be offered must be clarified. Accordingly, in recognition of the positions of both the Public Representative and the Postal Service, the draft MCS language will be revised to limit the sale of Shipping and Mailing Supplies to postal retail locations and the Postal Service's Web site. The draft MCS language will also be revised to change "related material" to "related packaging materials used to prepare items for entry into the mailstream" to clarify the limited nature of the related materials.

4. International Money Transfer Services

In Docket No. MC2008–1, the Postal Service sought to have International Money Transfer Service (IMTS) classified as a postal service. In this proceeding, the Postal Service proposes to bifurcate IMTS into an outbound product (IMTS-Outbound) and an inbound product (IMTS-Inbound). Request at 6–10; Attachment A at 12; and Attachment G. The IMTS-Outbound product features prices of "general applicability" for postal money orders and the electronic transfer of money that can be cashed or accessed, respectively, in a number of foreign countries. The separate IMTS-Inbound product consists of 10 agreements with foreign postal administrations that govern Postal Service payment of foreign money orders presented to post offices in the United States. Request at 6. The Postal Service states that the agreements are "functionally equivalent" having many similar cost and market characteristics. *Id.* at 9. As part of its Request, the Postal Service proposes MCS text consisting of descriptive information concerning the IMTS-Outbound and IMTS-Inbound products. Request, Attachment A, at 13–15.

The Public Representative raises two concerns with respect to the addition of IMTS-Outbound and IMTS-Inbound to the Competitive Product List. First, the Postal Service failed to provide any financial information in support of its Request, thereby precluding any determination as to whether IMTS-Outbound and IMTS-Inbound comply with various provisions of the PAEA. Public Representative Comments at 7. Second, the Public Representative reports the Commission's finding, in its FY 2008 Annual Compliance Determination (ACD) that IMTS-Outbound and IMTS-Inbound combined

[35] "Related items could include boxed note cards, stationery sets, and boxed greeting cards for everyday occasions or holidays." Response to CHIR No. 2, Question 1(a).

did not cover its attributable costs.[36] *Id.* at 8. The Public Representative suggests that until accurate cost and revenue data are provided, the Commission should defer action on these products or, alternatively, add them as experimental products. *Id.* at 9. If, however, the Commission decides to add IMTS-Outbound and IMTS-Inbound to the Competitive Product List, the Public Representative recommends that the Commission require a greater commitment from the Postal Service to produce reliable cost estimates with sufficient time to review any new methodologies. *Id.*

The Public Representative's concerns are well founded. At the time of its Request in this proceeding, the Postal Service stated "it is not possible to say with confidence that either IMTS-Outbound or IMTS-Inbound is or is not covering its attributable costs." Request, Attachment G, at 3. Moreover, the Postal Service further acknowledged it was without "sufficiently reliable information upon which [to] draw conclusions concerning the corrections that would be required properly to address the shortfall in cost coverage." *Id.* at 2. Consequently, during FY 2009, the Postal Service proposed to further study the "basic information needed to analyze the cost coverage of both IMTS products and to report again to the Commission by July 15, 2009__." *Id.* at 3. The Postal Service's subsequent report detailed recent efforts and difficulties associated with obtaining data to estimate IMTS costs and stated that the Postal Service was returning to the "task of accumulating enough observations of IMTS transactions to determine more reliably the costs attributable to them."[37] However, the July 15, 2009 report does not indicate when the Postal Service intends to complete its "further study."

The Postal Service's request to add IMTS-Outbound and IMTS-Inbound as separate products to the Competitive Product List is approved. However, it is imperative that the Postal Service continue its work to develop reliable cost estimates for both products.[38]

D. Miscellaneous Issues

UPS states that the Commission should consider the impact of adding products to the Competitive Product List on the overall contribution of competitive products to the Postal Service's institutional costs. UPS Comments at 2. UPS does not oppose the addition of any product to the Competitive Product List, but urges the impact of adding new competitive products to the list be evaluated, particularly as regards their contribution to institutional costs.

The Commission agrees with UPS that the cumulative impact of adding products to the Competitive Product List must be evaluated. The next opportunity for that evaluation will be in the 2010 ACD proceedings.

In conclusion, the Commission approves the Postal Service's Request to add products to the Market Dominant Product List and Competitive Product List as discussed in this order.[39] The revisions to the Market Dominant and Competitive Product Lists are shown below the signature on this order and are effective upon issuance of the order.

IV. Ordering Paragraphs

It is ordered:

1. The Postal Service's request to add postal products to the Market Dominant Product List and Competitive Product List is approved as set forth in the body of this order.

2. Address Management Services and Customized Postage are added to the Market Dominant Product List as products under Special Services. Address List Services is replaced by Address Management Services.

3. Address Management Services shall contain the following elements: Address Sequencing; Advance Notification and Tracking System; AEC II (Address Element Correction II) Service; AIS (Address Information Service) Viewer; Barcode Certification; CRIS (Carrier Route Information Service); CASS (Coding Accuracy Support System) Certification; Change-of-Address Information for Election Boards and Registration Commissions; City State; CDS (Computerized Delivery Sequence); Correction of Address Lists; Delivery Statistics; Delivery Type; DMM (Domestic Mail Manual) Labeling Lists; DPV (Domestic Point Validation) System; DSF2 (Delivery Sequence File–2nd Generation) Service; eLOT (enhanced Line of Travel) Service; FASTforward MLOCR (Multi-line Optical Character Reader); Five-Digit ZIP; LACS^{Link} (Locatable Address Conversion Service); Mailpiece Quality Control Certification; MAC (Manifest Analysis and Certification) Batch System Certification; MAC Gold System Certification; MAC System Certification; MASS (Multiline Accuracy Support System) Certification; NCOA^{LINK} (National Change of Address) Service; NCOA^{LINK} (National Change of Address) Service-ANK^{Link} (Addressee Not Known) Service Option; Official National Zone Charts; PAGE (Presort Accuracy, Grading, and Evaluation) System Certification; PAVE (Presort Accuracy, Validation, and Evaluation) System Certification; RDI (Residential Delivery Indicator) Service; Z4CHANGE; Z4INFO; ZIP+4 Service; ZIPMove; and ZIP Code Sortation of Address Lists.

4. The Postal Service shall within 30 days of the date of this order file appropriate draft product descriptions for the following: Address Management Services: Advance Notification and Tracking System; Mailpiece Quality Control Certification; MAC™ Batch System Certification; MAC™ Gold System Certification; MAC™ System Certification; PAGE System Certification; PAVE™ System Certification; and Z4INFO.

5. The Postal Service shall file an appropriate request to add Stamp Fulfillment Services to the Mail Classification Schedule Market Dominant Product List within 60 days of the date of this order, as discussed in the body of this order.

6. Address Enhancement Service is added to the Competitive Product List. Address Enhancement Service shall contain the following elements: AEC (Address Element Correction); AMS API (Address Matching System Application Program Interface); TIGER/ZIP + 4 (topological Integrated Geographic Encoding and Referencing).

7. Greeting Cards and Stationery and Shipping and Mailing Supplies are added to the Competitive Product List.

8. International Money Transfer Service is replaced by International Money Transfer Service-Outbound and International Money Transfer Service-Inbound as products on the Competitive Product List.

9. The Secretary shall arrange for publication of this order in the **Federal Register.**

[36] In this regard, the Postal Service's FY 2008 Annual Compliance Report (ACR) stated that IMTS as a whole did not cover its attributable costs. In addition, the Postal Service was unable to report the financial results of IMTS-Outbound and IMTS-Inbound separately. FY 2008 International Cost and Revenue Analysis (ICRA) Report (Non-Public), A Pages (c), at page A–2, n.5.

[37] Supplemental Response of the United States Postal Service to Order No. 154, July 15, 2009, Attachment A, Statement of Supporting Justification, at 6.

[38] In Docket No. RM2010–4, filed during the pendency of the instant proceeding, the Postal Service proposed to change the volume variability of window service costs for IMTS. This change only applies to the combined inbound and outbound services and does not address the development of separate costs for the IMTS-Inbound and IMTS-Outbound products requested by the Postal Service in this proceeding.

[39] Bracketed text in previous Product Lists, which has been used to reserve entries for class, product and group descriptions, is being eliminated to improve readability, foster consistency of presentation, conform the Lists more closely to long-term expectations about format, and to reduce costs associated with publication.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020–Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- Customized Postage
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2010-12 and R2010-2)

Market Dominant Product Descriptions
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- Address Correction Service
- Applications and Mailing Permits
- Business Reply Mail
- Bulk Parcel Return Service
- Certified Mail
- Certificate of Mailing
- Collect on Delivery
- Delivery Confirmation
- Insurance
- Merchandise Return Service
- Parcel Airlift (PAL)
- Registered Mail
- Return Receipt
- Return Receipt for Merchandise
- Restricted Delivery
- Shipper-Paid Forward
- Signature Confirmation
- Special Handling
- Stamped Envelopes
- Stamped Cards
- Premium Stamped Stationery
- Premium Stamped Cards
- International Ancillary Services
- International Certificate of Mailing
- International Registered Mail
- International Return Receipt
- International Restricted Delivery
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products
2000 Competitive Product List
Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
  - Inbound International Expedited Services 1 (CP2008–7)
  - Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
  - Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post (at non-UPU rates)
  - Royal Mail Group Inbound Air Parcel Post Agreement
- Inbound Air Parcel Post (at UPU rates)

Parcel Select
Parcel Return Service
International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M—Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010–14 and CP2010–13—Inbound Surface Parcel post at Non-UPU Rates and Xpresspost-USA)
- International Money Transfer Service—Outbound
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Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–5212 Filed 3–10–10; 8:45 am]

BILLING CODE 7710–FW–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0369; FRL–9125–3]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a site-specific revision to the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM_{10}) for Aggregate Industries Yard A Facility in Saint Paul, Ramsey County, Minnesota. On May 19, 2009, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain portions of a joint Title I/Title V document into the Minnesota PM_{10} SIP for this facility. The State is also requesting in this submittal that EPA rescind the Administrative Order (AO) issued to J.L. Shiely Company which is currently included in Minnesota's SIP for PM_{10}. The emissions units previously owned by J.L. Shiely Company are now owned by Aggregate Industries. Because the PM_{10} emission limits are being reduced, the air quality of Ramsey County will be protected.

DATES: This direct final rule will be effective May 10, 2010, unless EPA receives adverse comments by April 12, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule 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–OAR–2009–0369, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: damico.genevieve@epa.gov.*
3. *Fax:* (312) 385–5501.
4. *Mail:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77

West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0369. 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 *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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information
1. What Is the Background for This Action?
2. Why Is EPA Taking This Action?
3. What Are Title I Conditions and Joint Title I/Title V Documents?
4. Has Public Notice Been Provided?
II. What Action Is EPA Taking?
III. Statutory and Executive Order Reviews

I. General Information

1. What Is the Background for This Action?

The Aggregate Industries Yard A Facility (facility) is located at 1177 Childs Road in Saint Paul, Ramsey County, Minnesota. The facility was previously owned and operated by J.L. Shiely Company and was found to be a culpable source in the Childs Road area's nonattainment of the PM_{10} National Ambient Air Quality Standards (NAAQS). The facility is currently owned and operated by Aggregate Industries.

Minnesota originally submitted an AO for the facility as part of the PM_{10} SIP in 1992. The AO was issued to the J.L. Shiely Company to place operating restrictions on the facility to control PM_{10} emissions.

On April 23, 2009, the MPCA issued Air Permit no. 12300007–002 as a joint Title I/Title V document. The joint Title I/Title V document contains conditions identified as "Title I Conditions: SIP for PM_{10}." These conditions contain all the applicable requirements for the source to ensure that the area will continue to maintain the NAAQS. MPCA requests that those conditions labeled "Title I Conditions: SIP for PM_{10}" in the Joint Title I/Title V document replace the AO as the SIP enforceable document.

2. Why Is EPA Taking This Action?

The SIP is being amended to reflect a change in ownership of the facility and the emissions units that are subject to SIP conditions. The facility is an aggregate distribution and storage facility. It receives aggregate by barge, uploads it, and conveys it to one of several storage piles based on size and material type. The aggregate is stored until it is loaded to trucks for off-site transport. The facility operates an aggregate heater that is used between November and April to reduce moisture content and make some materials more easily conveyed. The primary emissions from the facility are PM and PM_{10} from the aggregate heater, as well as fugitive emissions from the stockpiles and unpaved roads. According to previous emissions calculations for this facility, the majority of PM_{10} emissions were attributed to operation of the aggregate heater.

Aggregate Industries currently owns the emissions units that are subject to PM_{10} emission limits or operating standards under the AO issued to J.L. Shiely Company. The AO was modified to show that the original aggregate heater, which burned fuel oil, has been replaced with a new heater, which burns natural gas. The previous emissions limits were up to 15.2 pounds/hour (lbs/hr) PM_{10}. However, with the replacement to the cleaner burning unit, those emissions are reduced by an order of magnitude to 0.119 lbs/hr, significantly lowering overall PM_{10} emissions at this facility. Additional revisions to the SIP for units owned by Aggregate Industries include changes to requirements for storage piles to reflect actual operating conditions. Previously, the facility was not allowed to operate the product pile conveyors unless the free fall height from the conveyor to the product pile is less than 10 feet, to minimize fugitive dust, which represents a small portion of the overall PM_{10} emissions for this facility. However, there are times when operating conditions do not allow the facility to consistently maintain the 10 foot free fall height, due to depletion of the product piles during winter months when supplies are limited by cold weather. Additional language ensures that the 10 foot fall height should be achieved as expeditiously as possible, and that the fall height cannot be greater than 10 feet for more than six hours. These requirements will ensure that the PM_{10} NAAQS is maintained, while allowing the facility some flexibility in establishing new product piles.

Modeling performed in support of the original SIP for the facility attributed the

majority of PM_{10} emissions to the burning of residual fuel oil in the original heater. Since this type of fuel will no longer be burned, overall ambient concentrations of PM_{10} will decrease, especially considering that the fugitive emissions from the conveyor operations contributed a much smaller proportion of PM_{10} emissions.

3. What Are Title I Conditions and Joint Title I/Title V Documents?

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not Federally-enforceable because the permits expire. MPCA then issued permanent AOs to culpable sources in nonattainment areas from 1991 to February of 1996.

MPCA's consolidated permitting regulations, which EPA approved into the SIP on May 2, 1995 (60 FR 21447), include the term "Title I condition" which was written, in part, to satisfy EPA's requirements that SIP control measures remain permanent. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *" The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any Title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

MPCA has initiated using joint Title I/Title V documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V documents submitted by MPCA are cited as "Title I conditions," therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the State's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Clean Air Act (CAA) (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from AOs to joint Title I/Title V documents.

4. Has Public Notice Been Provided?

MPCA published a public notice on March 12, 2009, regarding the SIP revision and the Joint Title I/Title V document. No comments were received during the comment period which ended on April 20, 2009. In the public notice, MPCA stated it would hold a public hearing if one were requested during the comment period. This follows the alternative public participation process EPA approved on June 5, 2006 (71 FR 32274). For limited types of SIP revisions that the public has shown little interest in, a public hearing is not automatically required. If anyone requests a public hearing during the comment period, MPCA will hold a public hearing. Because no one requested a public hearing, MPCA did not hold a public hearing for these SIP revisions.

II. What Action Is EPA Taking?

EPA is approving a site-specific revision to the Minnesota PM_{10} SIP for the Aggregate Industries Yard A Facility, located in the city of Saint Paul, Ramsey County, Minnesota. The SIP revision also rescinds the AO issued to J.L. Shiely Company and replaces it with Title I SIP Conditions included in the Air Emission Permit No. 12300007–002, for Aggregate Industries, which serves as a joint Title I/Title V document.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 10, 2010 without further notice unless we receive relevant adverse written comments by April 12, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective May 10, 2010.

III. Statutory and Executive Order Reviews.

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 25, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by removing the entry for "J.L. Shiely Company" and adding an entry, in alphabetical order, for "Aggregate Industries" to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Aggregate Industries	12300007–002	04/03/09	03/11/10, [Insert page number where the document begins].	Only conditions cited as "Title I condition: SIP for PM_{10} NAAQS."
*	*	*	*	* * *

* * * * *

[FR Doc. 2010–5122 Filed 3–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0192; FRL–9125–9]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Permit Renewal Application and Permit Renewal Submittal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve revisions to the applicable State Implementation Plan (SIP) for the State of Texas which relate to the Permit Renewal Application and Permit Renewal Submittal regulations. These portions of the SIP revisions approved today would address requirements related to the timeline for the submittal of an application for permit renewal. EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being proposed under section 110 and parts C and D of the Act.

DATES: This direct final rule is effective on *May 10, 2010* without further notice, unless EPA receives relevant adverse comment by April 12, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0192 by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at *robinson.jeffrey@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2008–0192. 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 that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be

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

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Magee, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7161; fax number (214) 665–6762; e-mail address *magee.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever any reference to "we," "us," or "our" is used, we mean EPA.

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I. The State's Submittals

On December 15, 1995, July 22, 1998, and September 4, 2002, the Texas Commission on Environmental Quality (TCEQ) submitted proposed revisions to the Texas State Implementation Plan (SIP) concerning the Permit Renewal Application, 30 TAC Chapter 116, Subchapter D, Section 116.311—Permit Renewal Application. The December 15, 1995 and July 22, 1998 revisions were superseded and rendered moot by revisions submitted to EPA on September 4, 2002 because they repealed the earlier versions of the same provisions addressed in that submittal. The September 4, 2002 SIP revision recodified the existing provision of section 116.311(c) into a new section 116.315—Permit Renewal Submittal. The SIP submittals of 30 TAC 116.311 dated July 22, 1998 and September 4, 2002 have other provisions that have not been evaluated in any prior action and are severable from the provisions that we are approving in this action because the revisions being addressed here are ministerial and non-controversial in nature. Additional information related to these SIP submittals are contained in the Technical Support Document (TSD).

Revisions to the Permit Renewal Submittal section were submitted by TCEQ to EPA on September 25, 2003 and May 30, 2008. The September 25, 2003 SIP submittal revisions state that an application for permit renewal must be submitted at least six months, but no earlier than 18 months prior to the permit expiration date. Also included within the revision is a provision for the Executive Director to approve applications before or after this specified time period. Following the passage of the Texas Senate Bill 1673 (SB 1673), 80th Legislature, 2007, TCEQ submitted to EPA revisions to section 116.315 on May 30, 2008 to allow the Commission to process a renewal application at the same time as an amendment for a preconstruction permit, provided the amendment application is filed not more than three years before the date the permit is scheduled to expire and is subject to public notice requirements. The revisions were adopted by the state on May 7, 2008. With this action, we are approving these revisions and recodifications of the Permit Renewal Section.

The table below summarizes the changes that were submitted and are affected by this action. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in section III of this preamble. The TSD includes a detailed evaluation of the referenced SIP submittals.

Section	Title	Date submitted	Date adopted by the state	Comments
30 TAC 116.311	Permit Renewal Application.	12/15/95*	11/16/95*	Renamed previously SIP approved Subsection (c) to subsections (d) and (e).
		7/22/98*	6/17/98*	
		9/4/02	8/21/02	Removed pre-existing non-SIP approved subsections (d) and (e) and recodified to a new 30 TAC 116.315 (a) and (b).
30 TAC 116.315	Permit Review Submittal	9/4/02	8/21/02	Initial adoption.
		9/25/03	8/20/03	Revised previously recodified subsection (a); New subsection (b); Redesignated former recodified subsection (b) to subsection (c).

Section	Title	Date submitted	Date adopted by the state	Comments
		5/30/08	5/7/08	Revised subsection (a); New subsection (c); Re-designated former subsection (c) to subsection (d).

*Because Texas Repealed and resubmitted each section under Subchapter D in its 7/22/98 submittal, our analysis includes 12/15/95 and 7/22/98 SIP submittal together.

II. What Action Is EPA Taking?

We have evaluated the SIP submissions for consistency with the CAA, NSR regulations for major and minor sources in 40 CFR Part 51, and the approved Texas SIP. We have also reviewed the rules for enforceability and legal sufficiency. In this review, we have identified that on March 10, 2006, EPA approved revisions to Title 30 of the Texas Administrative Code (30 TAC), Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, Section 311—Permit Renewal Application into the Texas SIP. Since EPA's approval, Texas has submitted three SIP revisions to section 116.311(c) on December 15, 1995, July 22, 1998 and September 4, 2002. The December 15, 1995 and July 22, 1998 rule revisions to 116.311(c) are superseded by the September 4, 2002 SIP submittal. Included in the September 4, 2002 revision to section 116.311, is the recodification of existing severable provisions from section 116.311(c) to a new section 116.315—Permit Renewal Submittal.

On September 25, 2003, TCEQ submitted to EPA changes to the new section 116.315. As a result of the passage of the Texas Senate Bill 1673 (SB 1673), 80th Legislature, 2007, TCEQ submitted additional revisions to section 116.315 on May 30, 2008. The revisions include provisions allowing the Commission to process a renewal application at the same time as an amendment for a preconstruction permit, provided the amendment application is filed not more than three years before the date the permit is scheduled to expire and are subject to public notice requirements.

A technical analysis of the submittals for the Permit Renewal Application and Permit Renewal Submittal sections has found that these changes are consistent with the CAA, 40 CFR Part 51 and EPA policies. Therefore, EPA is taking a direct final action to approve the revision and recodification of section 116.311(c) to the new section 116.315 rules submitted on December 15, 1995, July 22, 1998, September 4, 2002, September 25, 2003 and May 30, 2008.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on *May 10, 2010* without further notice unless we receive relevant adverse comment by *April 12, 2010.* If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. EPA's Evaluation

A. What Did Texas Submit for the Permit Renewal Application Section?

The provisions for 30 TAC 116.311—Permit Renewal Application were submitted to EPA on August 31, 1993 and April 29, 1994. EPA approved the submitted revisions on March 10, 2006 (71 FR 12285) and became effective on May 9, 2006. Since EPA's last approval for this section, TCEQ has submitted three SIP revisions to EPA for the Permit Renewal Application section on December 15, 1995, July 22, 1998 and September 4, 2002. The SIP revisions submitted to EPA on December 15, 1995 and July 22, 1998 are superseded by the SIP revision submitted September 4, 2002. The September 4, 2002 SIP submittal also includes several revisions that remain under review and will not be addressed in this action. However, with this action, we are approving the recodification and revision of the existing provisions of section 116.311(c) to a new section 116.315—Permit Renewal Submittal.

B. What Is EPA's Evaluation of the Permit Renewal Application Revisions?

The SIP revisions for section 116.311—Permit Renewal Application revise and recodify the existing provisions. The revisions approved with this action are described below:

- *Subsections (d) and (e):* The provisions in subsections (d) and (e) are currently approved as subsection (c). The 1995 and 1998 SIP revisions reorganized these provisions as subparagraphs (d) and (e) and made non-substantive changes. In the September 4, 2002, SIP submittal; these provisions were recodified into a new 30 TAC 116.315(a) and (b).

C. What Did Texas Submit for the Permit Renewal Submittal?

Revisions to the Permit Renewal Submittal were submitted to EPA on September 25, 2003 and included several non-substantive changes. However, as a result of the passage of the Texas Senate Bill 1673 (SB 1673), 80th Legislature, 2007 on May 30, 2008, TCEQ submitted to EPA changes to the Permit Renewal Section to revise and recodify this section's provisions.

D. What Is EPA's Evaluation of the Permit Renewal Submittal Revisions?

Section 116.315—Permit Renewal Submittal allows the Commission to process a renewal application at the same time as an amendment for a preconstruction permit, provided the amendment application is filed not more than three years before the date the permit is scheduled to expire and is subject to public notice requirements. The revisions approved with this action are described below:

- *Subsection (a):* This subsection is currently approved as 30 TAC 116.311 (c). Subsection (c) was recodified and reorganized as 30 TAC 116.311(d) and (e), submitted December 15, 1995 and July 22, 1998, with revisions, which EPA has not yet approved. On September 4, 2002, Texas recodified 30 TAC 116.311(d) and (e) as 30 TAC 116.315(a) and (b) with non-substantive changes. In the September 25, 2003 submittal, Texas changed the date for submitting a renewal application from 90 days prior to the permit expiration date to no earlier than 18 months prior

to the expiration of the permit expiration date. In the May 30, 2008 submittal, Texas revised the first sentence of subsection (a) to provide that the provisions apply, except as provided in subsection (b) and (c). EPA's technical review has found that this change is an improvement of the existing requirements. Therefore, we are approving the revisions to subsection (a).

• *Subsection (b):* In the September 4, 2002, submittal, the last sentence of subsection (a) was replaced with a new subsection (b) which provides that with approval of the Executive Director, an application for renewal may be submitted after the time period in subsection (a). This revised provision is broader than the current SIP provisions and is beyond the current CAA requirements and EPA NSR requirements. Therefore, by approving this revision into the SIP, the existing rule language will be clarified and enhanced.

• *Subsection (c):* This new subsection, submitted May 30, 2008, provides that a renewal application with appropriate fee may be submitted at the same time as an amendment application to modify an existing facility as long as it is submitted not more than three years before the permit's expiration date and the amendment is subject to public notice requirements under Texas Health Code, section 382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing. The Texas public participation and air permit rules may be found in 30 TAC Chapter 39 and 30 TAC 101, respectively, and are severable from the section 116.315 provisions. Because the revisions to this section affect the timing of permit renewals and do not change the requirements for public notice and permit fees, EPA is approving this change.

• *Subsection (d):* This was initially submitted as subsection (b) on September 4, 2002. This subsection was recodified as subsection (c) in the September 25, 2003, submittal, then recodified to subsection (d) in the May 8, 2008 submittal. Other than the two recodifications, no changes were made. The recodification of subsection (d) is a non-substantial change; therefore, EPA is approving this revision.

IV. Final Action

EPA is taking direct final action to approve severable portions of revisions to the SIP Texas submitted on December 15, 1995, July 22, 1998, September 4, 2002, September 25, 2003, and May 30, 2008. We have determined that the revised rules clarify and enhance the existing SIP.

Within the TSD, several sections of these SIP submittals are identified as being included in this action. Sections 116.115, 116.120 and 116.315 are currently under review and EPA will act on these revisions separately. The remaining sections have been addressed by EPA in prior separate actions.

V. Statutory and Executive Order Reviews

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

• Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 2, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 116, Subchapter D, as follows:

■ a. By revising the entry for Section 116.311, Permit Renewal Application; and

■ b. Immediately following the entry for Section 116.314, Review Schedule, by adding a new entry for Section 116.315, Permit Renewal Submittal.

The revision and addition read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification				
*	*	*	*	*
Subchapter D—Permit Renewals				
*	*	*	*	*
Section 116.311	Permit Renewal Application.	4/6/1994	3/10/2006, 71 FR 12285	The SIP does not include subsection (c). The requirements of subsection (c) were added to Section 116.315 and approved by EPA on March 11, 2010 [Insert FR page number where document begins].
*	*	*	*	*
Section 116.315	Permit Renewal Submittal.	5/7/2008	March 11, 2010 [Insert *FR* page number where document begins].	
*	*	*	*	*

[FR Doc. 2010–5240 Filed 3–10–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at

selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Mobile County, Alabama, and Incorporated Areas Docket No.: FEMA–B–7732			
Branch B	Approximately 2,900 feet downstream of Golfway Street ..	+87	City of Mobile, City of Prichard.
	Approximately 3,300 feet downstream of Golfway Street ..	+172	
Branch C	Approximately 50 feet downstream of U.S. Route 45	+42	City of Prichard.
	Approximately 1,200 feet upstream of West Meyers Road	+91	
Branch D	Approximately 100 feet downstream of West Meyers Road.	+56	City of Prichard.
	Approximately 500 feet upstream of Cochran Road	+117	
Branch D Tributary	At the confluence with Branch D	+88	City of Prichard.
	Approximately 1,100 feet upstream of the confluence with Branch D.	+127	
Branch E	Approximately 2,100 feet upstream of the confluence with Eightmile Creek.	+18	City of Prichard.
	Approximately 1,800 feet upstream of Aldock Road	+35	
Branch F	Approximately 1,100 feet upstream of the confluence with Eightmile Creek.	+15	City of Prichard.
	Approximately 3,800 feet upstream of the confluence with Eightmile Creek.	+32	
Branch G	Approximately 800 feet downstream of West Main Street	+28	City of Prichard.
	Approximately 250 feet upstream of Wolf Ridge Road	+44	
Gum Tree Branch	Approximately 100 feet upstream of Turner Road	+25	City of Prichard.
	Approximately 600 feet upstream of Caledonia Street	+29	
Miller Creek	Approximately 2,600 feet upstream of Snow Road	+153	Unincorporated Areas of Mobile County.
	Approximately 12,420 feet upstream of Snow Road	+183	
Unnamed Branch	Approximately 100 feet downstream of Bear Fork Road ...	+88	City of Prichard.
	Approximately 1,100 feet upstream of Forrest Park Road	+149	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Mobile
Maps are available for inspection at 205 Government Street, 3rd Floor, Mobile, AL 36602.

City of Prichard
Maps are available for inspection at 216 East Prichard Avenue, Mobile, AL 36610.

Unincorporated Areas of Mobile County
Maps are available for inspection at 1110 Schillinger Road, Suite 100, Mobile, AL 36608.

Madison County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1022			
Bear Creek	9,400 feet upstream of Weiss Road	+266	Unincorporated Areas of Madison County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	1,600 feet downstream of Reunion Parkway	+287	
Beaver Creek	400 feet upstream of U.S. Route 51	+316	City of Ridgeland.
	400 feet upstream of Planters Grove	+323	
Brashear Creek	1,800 feet downstream of Grandview Boulevard	+328	City of Madison, Unincorporated Areas of Madison County.
	100 feet upstream of Highland Colony Parkway	+350	
Panther Creek	1,800 feet upstream of Stokes Road	+214	Unincorporated Areas of Madison County. City of Ridgeland.
	5,000 feet downstream of Catlett Road	+240	
Purple Creek	2,000 feet downstream of U.S. Route 51	+314	
	1,500 feet downstream of I–55	+332	
Reunion Lake #1	Entire shoreline	+327	Unincorporated Areas of Madison County.
Reunion Lake #2	Entire shoreline	+327	Unincorporated Areas of Madison County.
School Creek	500 feet upstream of Old Canton Road	+298	City of Ridgeland.
	1,100 feet downstream of Lake Harbour Drive	+309	
School Creek Tributary 1	600 feet downstream of Lake Harbour Drive	+312	City of Ridgeland.
	700 feet upstream of Wendover Way	+328	
School Creek Tributary 2	750 feet downstream of Camellia Lane	+325	City of Ridgeland.
	350 feet downstream of Camellia Lane	+328	
Stream 0	200 feet upstream of I–55	+270	Unincorporated Areas of Madison County.
	200 feet downstream of Gluckstadt Road	+272	
Stream Q	1,800 feet upstream of I–55	+274	Unincorporated Areas of Madison County.
	800 feet upstream of Gluckstadt Road	+295	
Stream R	4,500 feet downstream of Dewees Road	+299	Unincorporated Areas of Madison County.
	1,100 feet downstream of Dewees Road	+304	
White Oak Creek Tributary 1	250 feet upstream of Oakhurst Trail	+360	City of Ridgeland.
	600 feet downstream of Bridgewater Road	+375	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Madison
Maps are available for inspection at 525 Post Oak Road, Madison, MS 39110.

City of Ridgeland
Maps are available for inspection at 304 U.S. Route 51, Ridgeland, MS 39157.

Unincorporated Areas of Madison County
Maps are available for inspection at 146 West Center Street, Canton, MS 39046.

* (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 3, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–5233 Filed 3–10–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02 and 0910131363–0087–02]

RIN 0648–XV03

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 6, 2010, and will close 1200 hrs, A.l.t., November 15, 2010. This period is the same as the 2010 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures.

DATES: Effective 1200 hrs, A.l.t., March 6, 2010, until 1200 hrs, A.l.t., November 15, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hrs, A.l.t., March 6, 2010, and will close 1200 hrs, A.l.t., November 15, 2010. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 5, 2010.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.23 and is exempt from review under Executive Order 12866.

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

Dated: March 8, 2010.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 2010–5243 Filed 3–8–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 47
Thursday, March 11, 2010

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Document No. AMS–FV–08–0098]

RIN # 0581–AC92

Perishable Agricultural Commodities Act: Increase in License Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to increase license fees. Current annual license fees of $550 would increase to $995. Fees for branch locations would increase from $200 for branch locations in excess of nine to $600 for each branch location. The maximum amount a licensee would pay per year would increase from $4,000 to $8,000. Additionally, the regulations would be amended to remove the provisions to phase out license fees by retailers and grocery wholesalers and the provisions to phase in triennial license renewal for retailers and grocery wholesalers as these processes have already occurred. We also propose to eliminate the multi-year license renewal option for commission merchants, brokers, and dealers.

DATES: Written or electronic comments received by May 10, 2010 will be considered prior to issuance of a final rule.

ADDRESSES: You may submit written or electronic comments to:

(1) PACA License Fee Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Washington, DC 20250–0242.

(2) *Fax:* 202–690–4413.

(3) E-mail comments to *Pacalicensefee@ams.usda.gov.*

(4) *Internet: http://www.regulations.gov.*

Instructions: All comments will become a matter of public record and should be identified as "PACA License Fee Comments". Comments will be available for public inspection from the Agricultural Marketing Service at the above address or over the Agency's Web site at *http://www.ams.usda.gov/paca.* Web site questions can be addressed to the PACA Webmaster, *christine.tipton@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey F. Davis, Assistant Director, National License Center, PACA Branch, Fruit and Vegetable Programs (703) 331–4575.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

The Perishable Agricultural Commodities Act (PACA or Act) of 1930 establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA Branch proactively works for the fruit and vegetable industry promoting interstate and foreign commerce through dispute resolution, licensing, and outreach programs facilitating fair trade practices. The PACA enforces Federal regulations outside the civil court system by upholding contract requirements. The PACA also mandates full and prompt payment, removes unscrupulous individuals from the trade when needed, and provides expert advice on trust protection.

The PACA Amendments of 1995 [1] increased the annual license fee from $400 to $550 (up to a maximum annual fee of $4000) for all licensees except retailers and grocery wholesalers.[2] The 1995 Amendments granted USDA the authority to increase fees through rulemaking after November 14, 1998 provided that the PACA program's operating reserves fall below 25 percent of PACA's projected annual program costs.[3] Because of the loss of revenue to the Agency caused by the amendment's requirement that fees for retailers and grocery wholesalers be phased out, PACA program budget projections for FY 2000 and 2001 indicated the program's assets would have fallen below the required 25 percent of projected expenditures in FY 2001. However, on June 20, 2000 President Clinton signed Public Law 106–224 which included $30.45 million to be deposited into USDA's PACA reserve fund on October 1, 2000, in order to maintain PACA license and complaint filing fees at their 1995 levels.[4] The one-time appropriation (expected to last a few years) has lasted almost 11 years through concentrated cost-cutting measures, including office restructuring and staff reductions. In FY 2006, the PACA Branch restructured its regional offices and consolidated nationwide licensing functions into one office, resulting in over $1 million in annual savings. In January, 2000, the PACA Branch operated with 116 employees. As a result of gains in technology and office consolidations this program now employs approximately 80 full time staff members in three regional offices and Washington, DC. The 2007 U.S. Department of Commerce Bureau of Economic Analysis report indicates the total retail value of fruits and vegetables for at-home and away-from-home consumption was $80–$95 billion. The PACA Branch operating expenses in FY 2008 were $10.6 million, constituting a sound value in cost-efficiency and productivity dedicated to the service of the fruit and vegetable industry.

During the last quarter of FY 2010, or possibly the first quarter of FY 2011, the PACA Branch operating fund will fall below 25 percent of projected annual program costs. Without a fee increase in FY 2011, the program will exhaust its reserves by the second quarter of FY 2011, and would soon need to begin reducing its level of services to the industry. We propose to increase the current base annual license fee for commission merchants, brokers, and dealers from $550 to $995. We also propose to increase the current $200 additional fee for branch locations in

[1] Public Law 104–48, 109 Stat. 427(1995).

[2] 7 U.S.C. 499c(b)(2).

[3] *Id.*

[4] Sec. 203, Public Law 106–224.

excess of nine to $600 for each branch location starting from the first branch. We further propose to increase the current aggregate fee maximum from $4,000 to $8,000. We propose that the fee increase become effective October 1, 2010. The proposed funding increase, provided that there is no significant increase in multi-year license renewals prior to its effective date, is expected to allow the PACA Branch to maintain its current level of services until FY 2015.

Financial Impact/Costs

The PACA is enforced through a licensing system and is user-fee financed through a license fee. The PACA requires commission merchants, wholesale dealers, grower's agents, food processors, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce to be licensed. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked by USDA [7 CFR 46.9(a)–(h)]. Currently, licensees may choose to renew their licenses on an annual, biennial, or triennial basis.

Wholesalers, processors, food service companies, and grocery wholesalers are considered to be dealers and subject to license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. Dealers whose fruit and vegetable purchases or sales do not exceed the 2,000 pound threshold are exempt from the license requirement. A retailer is considered to be a dealer and subject to license when purchases exceed the 2,000 pound threshold and the invoice cost of its perishable agricultural commodities exceeds $230,000 in a calendar year.

Although license fees account for the majority of PACA's funding, the program also collects about 4.4% of its revenue from fees charged to firms that submit disputes to the PACA Branch for resolution. Reparation complaint fees (informal and formal) are expected to account for $360,000 in revenue per year through FY 2015.

The initial increase in receipts from fees collected following the enactment of the 1995 Amendments allowed the PACA fund to build up operating reserves. Those reserves peaked at $7.48 million in July, 1998, creating revenue as investment income for subsequent years. In FY 2008, the program generated $6.35 million in license fees, $360,000 in complaint fees, and $419,000 in investment income for revenues totaling $7.13 million. During FY 2011 the operating reserve will be exhausted, generating no investment income. Projections indicate that the program must generate approximately $11.425 million per year by FY 2011 and $13.04 million by FY 2015 for the program to continue to maintain the current level of service to the industry. This equates to a $4.865 million per year increase in annual program revenues beginning with FY 2011, up to $6.48 million by FY 2015. Because over 95 percent of the program's revenue is generated through the collection of license fees, a majority of these funds would have to be raised through an increase in license fees.

When USDA proposed revisions to the PACA regulations implementing the 1995 Amendments (61 FR 47674, September 10, 1996), it noted that the next fee increase would need to be significant due to the phase out of the requirement that retailers pay license fees. The following table (based on the number of active, paying PACA licensees as of October 1, 2008) outlines how the proposed fee increase affects the PACA program's budget through FY 2015:

Fiscal year	Balance start of fiscal year	License and complaint fee revenue	Investment revenue	Total available funds	Projected costs	Months of operating reserve
2009	$11,785,000	$6,662,000	$102,000	$18,447,000	$10,732,000	8.4
2010	7,545,000	6,580,000	20,000	14,125,000	11,059,000	3.4
2011	3,065,000	12,399,000	0	15,464,000	11,425,000	4.4
2012	4,038,000	12,399,000	0	16,437,000	11,808,000	4.9
2013	4,628,000	12,399,000	0	17,027,000	12,205,000	4.9
2014	4,822,000	12,399,000	0	17,221,000	12,615,000	4.5
2015	4,606,000	12,399,000	0	17,005,000	13,040,000	3.8

The proposed increase in fees would result in estimated revenue of $12.4 million per year. AMS expects the PACA program will have adequate financing until FY 2015 (based on the current number of licensees and economic factors), when the reserve is again projected to fall below 25 percent.

Under § 46.9(k) of the regulations (9 CFR 46.9(k)), commission merchants, brokers, and dealers have been given the option since December 1, 1998 of renewing their licenses on an annual, biennial, and triennial basis. Currently, 17 percent hold the two-year or three-year licenses. The above revenue projections assume that there is no significant increase in multi-year renewals before the proposed fee increase becomes effective. A significant increase in such renewals could produce a shortfall in projected revenue for FY 2011 and FY 2012 that might necessitate a curtailment of services, or even an additional fee increase. Accordingly, an amendment terminating the option to renew on a biennial or triennial basis, which would become effective thirty days after publication of the final rule is proposed. This amendment will not apply to retailers and grocery wholesalers, who will continue to be licensed on a triennial basis.

Currently, Section 46.6 of the regulations (9 CFR 46.6) sets out the procedure followed to phase out retailers and grocery wholesalers from the requirement to pay license fees and Section 46.9(k) (9 CFR 46.9(k)) contains the procedure followed to phase in the triennial license renewal for those entities. Both the phase-in and phase-out processes have been completed. Therefore, these provisions are no longer needed and we propose to remove them from the regulations.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5

U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this proposed rule on small entities, and accordingly has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. The PACA is enforced through a licensing system and is user-fee financed primarily through a license fee. USDA's Agricultural Marketing Service administers and enforces the PACA.

As of October 1, 2008 there were 14,418 PACA licensees, a majority of which may be classified as small entities. Retailers and grocery wholesalers represent 4,125 licensees. Internally, PACA refers to retailers and grocery wholesalers as "non-paying" licensees, and all other licensees as "paying". Since November 1998, retailers and grocery wholesalers pay a $100 application processing fee. Their PACA license is effective for three years, renewed at no cost. Retailers accounted for about 35% of program revenue before their fees were phased out by Congress. Today, retailers account for 28.5% of all PACA licensees. However, since only new applicants pay a processing fee, retailers contribute little to PACA's annual operating revenue. The proposed fee increase will have no impact on operating costs of retailers and grocery wholesalers. Therefore, retailers and grocery wholesalers will not be unduly burdened by the proposed rule.

Wholesalers, processors, food service companies, commission merchants, dealers, brokers, and truckers are considered to be dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. This group represents the remaining 10,293 active, "paying" PACA licensees and is the only group impacted by the proposed fee increase.

While the annual revenues of this group of agricultural service firms is unknown, we estimated a significant percentage of these firms have annual receipts less than $7,000,000. Therefore, the businesses are "small businesses" within the meaning of that term in the RFA. A large number of these small agricultural service firms would be impacted by this proposed PACA fee increase. While the maximum amount of the proposed PACA license fee is to be $8,000, this increase will impact a small number of larger firms with multiple branches. Currently, only 56 licensees (or 0.0039%) of all PACA licensees would pay the $8,000 maximum. The fee structure in the proposal was designed so firms would only see the annual fee increase from $550 per year to the proposed $995 per year. This $445 fee increase is believed to be a minor increase in operating costs to these firms and is more than offset by the protection provided to these firms under the PACA. Larger firms operating at multiple branch locations would face larger fee increases. As the renewal of PACA licenses has become highly automated and renewal notices are sent to all licensees well before the renewal date, elimination of the option biennial or triennial licenses should not impose a substantial burden upon small businesses holding such licenses.

All fruit and vegetable traders that handle less than 2,000 pounds of fresh and/or frozen fruits and vegetables are exempt from the PACA license requirement and would not be subject to this proposed fee increase. These firms would be considered very small and handle a relatively minor volume of total fresh and/or frozen fruits and/or vegetables marketed.

On February 24, 2009 the USDA Fruit and Vegetable Industry Advisory Committee unanimously recommended to the Secretary of Agriculture their approval of the proposed license fee increase.

Paperwork Reduction Act

In accordance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements are currently approved under OMB number 0581–0031. The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the PACA as expressed in the order, and the rules and regulations issued under the order.

E-Government Act Compliance

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. License application forms are available on our PACA Web site at *http://www.ams.usda.gov/PACA* and can be printed, completed, and faxed. Currently, forms are transmitted by fax machine and postal delivery. The PACA Branch is working towards furthering its availability of online forms.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 46 is proposed to be amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: 7 U.S.C. 499a–499t.

2. In § 46.6, paragraphs (a) and (b) are revised to read as follows:

§ 46.6 License fees.

(a) Retailers and grocery wholesalers making an initial application for license shall pay a $100 administrative processing fee.

(b) For commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) the annual license fee is $995 plus $600 for each branch or additional business facility. In no case shall the aggregate annual fees paid by any such applicant exceed $8,000.

* * * * *

3. In § 46.9, paragraph (k) is revised and paragraph (l) is removed to read as follows:

§ 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.

* * * * *

(k) Only a commission merchant, broker, or dealer holding a multi-year license, prior to phase-out of this option, will receive a refund if business operations cease or a change in legal status occurs that requires issuance of a new license prior to the next license renewal date. If a refund is due, it will be issued for any remaining full-year portion of advance fee paid, minus a $100 processing fee.

Dated: March 5, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–5255 Filed 3–10–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0054; Airspace Docket No. 10–ASO–11]

Establishment of Class D Airspace, Modification of Class E Airspace; Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace and modify existing Class E airspace at Columbus Metropolitan Airport, Columbus, GA. A decrease in air traffic volume at the airport has made it necessary to downgrade controlled airspace for the safety and management of Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) operations.

DATES: Comments must be received on or before April 26, 2010.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0054; Airspace Docket No. 10–ASO–11, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–0054; Airspace Docket No. 10–ASO–11) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0054; Airspace Docket No. 10–ASO–11." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class D airspace and modify existing Class E airspace at Columbus, GA. Due to a decrease in air traffic volume at Columbus Metropolitan Airport a less restrictive Class D airspace would be established with specific dates and times established in advance by a Notice to Airmen. The existing Class E surface area would be modified to be coincident with the newly established Class D airspace. The existing Class E airspace extending upward from 700 feet above the surface would be modified for the safety and management of IFR operations. Lawson Army Airfield, Columbus, GA, would be removed from the Class E2 and E5 airspace description, and would be re-established under separate rulemaking.

Class D airspace designations, Class E2 surface airspace designations and Class E5 designations are published in Paragraphs 5000, 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class D airspace and modify existing Class E airspace at

Columbus Metropolitan Airport, Columbus, GA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Columbus, GA [New]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N., long. 84°56′20″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.4-mile radius of the Columbus Metropolitan Airport and that airspace within 1 mile each side of the 234° bearing from the airport, extending from the 4.4-mile radius to 5 miles southwest of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO GA E2 Columbus, GA [Amended]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N., long. 84°56′20″ W.)

Within a 4.4-mile radius of the Columbus Metropolitan Airport and that airspace within 1 mile each side of the 234° bearing from the airport, extending from the 4.4-mile radius to 5 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Columbus, GA [Amended]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N., long. 84°56′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Columbus Metropolitan Airport and that airspace within 1 mile each side of the 234° bearing from the airport, extending from the 6.8-mile radius to 7.3-miles southwest of the airport.

Issued in College Park, Georgia, on February 26, 2010.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–5180 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1140; Airspace Docket No. 09–AWP–13]

Proposed Amendment of Class D and E Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and E airspace at Victorville, CA. Additional Class D airspace is needed for Instrument Flight Rules (IFR) operations at Southern California Logistics Airport that would allow aircraft operations outside Class D at Adelanto Airport. This action is necessary for the safety and management of Instrument Flight Rules (IFR) aircraft utilizing both airports. This action also would note the airport name change.

DATES: Comments must be received on or before April 26, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1140; Airspace Docket No. 09–AWP–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–1140 and Airspace Docket No. 09–AWP–13) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1140 and Airspace Docket No. 09–AWP–13." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and

phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace extending upward from the surface to and including 5,400 feet MSL within a 6-mile radius of Southern California Logistics Airport, Victorville, CA excluding that airspace within a 1.5-mile radius of Adelanto Airport. This would enhance the safety and management of IFR operations at both airports. This action also would adjust the geographic coordinates and change the airport name from Southern California International Airport to Southern California Logistics Airport, in both Class D and E airspace descriptions. Class D and E airspace designations are published in paragraph 5000, and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This Rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Southern California Logistics Airport, Victorville, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Victorville, CA [Modified]

Victorville, Southern California Logistics Airport, CA
(Lat. 34°35′51″ N., long. 117°22′59″ W.)
Adelanto, Adelanto Airport, CA
(Lat. 34°32′15″ N., long. 117°27′38″ W.)

That airspace extending upward from the surface to 5,400 feet MSL within a 6-mile radius of the Southern California Logistics Airport, Victorville, CA, excluding that airspace with a 1.5-mile radius of Adelanto Airport, Adelanto, CA. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Victorville, CA [Amended]

Southern California Logistics Airport, CA
(Lat. 34°35′51″ N., long. 117°22′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Southern California Logistics Airport.

Issued in Seattle, Washington, on February 26, 2010.

William M. Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–5179 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1190; Airspace Docket No. 09–ANM–27]

Proposed Establishment of Class E Airspace; Kemmerer, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Kemmerer Municipal Airport, Kemmerer, WY, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at the airport. This action would enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 26, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1190; Airspace Docket No. 09–ANM–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–1190 and Airspace Docket No. 09–ANM–27) and be submitted in triplicate to the Docket Management System *(see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1190 and Airspace Docket No. 09–ANM–27". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of the Federal Regulations (14 CFR) part 71 by establishing Class E surface area airspace at Kemmerer Municipal Airport, Kemmerer, WY. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAPs at Kemmerer Municipal Airport, Kemmerer, WY. This action would enhance the safety and management of aircraft operations at the airport. The geographic coordinates also would be amended for the existing Class E airspace area to coincide with the FAA's National Aeronautical Charting Office.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Kemmerer Municipal Airport, Kemmerer, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY, E2 Kemmerer, WY [New]

Kemmerer Municipal Airport, WY
(Lat. 41°49′27″ N., long. 110°33′25″ W)

Within a 4.3-mile radius of the Kemmerer Municipal Airport, and within 1 mile each side of the 360° bearing from the airport, extending from the 4.3-mile radius to 7 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005. Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY, E5 Kemmerer, WY [Amended]

Kemmerer Municipal Airport, WY
(Lat. 41°49′27″ N., long. 110°33′25″ W)

That airspace extending upward from 700 feet above the surface within the 8-mile radius of the Kemmerer Municipal Airport,

and within 4 miles each side of the 174° bearing from the Kemmerer Airport extending from the airport 11 miles south of the airport, and within 3.6 miles each side of the 354° bearing from the Kemmerer Airport extending from the airport to 16.1 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 41°30′00″ N., long. 111°00′00″ W.; to lat. 42°10′00″ N., long. 111°00′00″ W.; to lat. 42°10′00″ N., long. 110°00′00″ W.; to lat. 41°30′00″ N., long. 110°00′00″ W.; to lat. 41°15′00″ N., long. 110°23′00″ W.; to point of origin; and excluding that airspace within Federal airways; and the Fort Bridger, WY, Class E airspace areas.

Issued in Seattle, Washington, on February 26, 2010.

William M. Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–5182 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0082; Airspace Docket No. 10–AAL–4]

Proposed Revision of Class E Airspace; Kaltag, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Kaltag, AK. The amendment of one Area Navigation Standard Instrument Approach Procedure (SIAP) at Kaltag Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before April 26, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0082/ Airspace Docket No. 10–AAL–4 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0082/Airspace Docket No. 10–AAL–4." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Kaltag Airport, AK, to accommodate an amended SIAP at Kaltag Airport. This Class E airspace would provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Kaltag Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at Kaltag Airport, Kaltag, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kaltag, AK [Revised]

Kaltag Airport, AK
(Lat. 64°19′08″ N., long. 158°44′29″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Kaltag Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Kaltag Airport, AK.

* * * * *

Issued in Anchorage, AK, on February 19, 2010.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–5260 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0080 Airspace Docket No. 10–AAL–2]

Proposed Revision of Class E Airspace; Wainwright, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Wainwright, AK. The amendment of four Standard Instrument Approach Procedures (SIAPs), and the development of one Obstacle Departure Procedure (ODP) at Wainwright Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before April 26, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0080/ Airspace Docket No. 10–AAL–2 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0080/Airspace Docket No. 10–AAL–2." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling

(202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Wainwright Airport, AK, to accommodate four amended SIAPs and the development of one ODP at Wainwright Airport. This Class E airspace would provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Wainwright Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at Wainwright Airport, Wainwright, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 Wainwright, AK [Revised]

Wainwright Airport, AK

(Lat. 70°38′17″ N., long. 159°59′41″ W.)

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Wainwright Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Wainwright Airport, AK, excluding that portion extending outside the Anchorage Arctic CTA/FIR (PAZA) boundary.

* * * * *

Issued in Anchorage, AK, on February 19, 2010.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–5279 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0081 Airspace Docket No. 10–AAL–3]

Proposed Revision of Class E Airspace; Nenana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Nenana, AK. The amendment of two Standard Instrument Approach Procedures (SIAPs), and an Obstacle Departure Procedure (ODP) at Nenana Municipal Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before April 26, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0081/ Airspace Docket No. 10–AAL–3 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0081/Airspace Docket No. 10–AAL–3." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Nenana Municipal Airport, AK, to accommodate amended SIAPs and departure procedures at Nenana Municipal Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet above the surface, for the safety and management of IFR operations at Nenana Municipal Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at Nenana Municipal Airport, Nenana, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Nenana, AK [Revised]

Nenana Municipal Airport, AK
(Lat. 64°32′50″ N., long. 149°04′26″ W.)
Ice Pool NDB
(Lat. 64°32′44″ N, long. 149°04′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nenana Municipal Airport, AK, and within 3 miles each side of the 249° bearing of the Ice Pool NDB, extending from the 6.5-mile radius to 10.3 miles southwest of the Nenana Municipal Airport, AK.

* * * * *

Issued in Anchorage, AK, on February 19, 2010.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–5174 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AB15

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice of proposed rulemaking and public meeting announcement.

SUMMARY: Section 325 of the Energy Independence and Security Act of 2007 provides the Commission with authority to promulgate energy labeling rules for certain consumer electronics, including televisions. On March 16, 2009, the Commission sought comment on whether it should require energy disclosures for these products. After reviewing the comments received, the Commission is proposing to require EnergyGuide labels on televisions to help consumers with their purchasing decisions. As part of this effort, the Commission has scheduled a public meeting on April 16, 2010, from 9:00 a.m. to 1:00 p.m.

DATES: Written comments must be received on or before May 14, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in section IX of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/ftc/tvdisclosures*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M-8102B, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 325 of the Energy Independence and Security Act of 2007 (EISA) (Pub. L. 110-140) authorizes the Commission to require energy disclosures for certain consumer electronics, including televisions, personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors.[1] On March 16, 2009, the Commission sought comment on whether to require energy disclosures for these products.[2] After reviewing the comments, the Commission proposes requiring "EnergyGuide" labels for televisions. The Commission does not propose requirements for other consumer electronics at this time, but seeks further comment on test procedures and other issues related to these products.

This Notice first provides background on the Commission's current energy labeling requirements and its previous consideration of television labeling requirements. Next, it explains the Commission's new labeling authority under EISA and why requiring television energy usage disclosures is proper under that statute. The Notice then details the content, format, and location of those proposed disclosures. Finally, it seeks comment on the proposed disclosures and on possible disclosure requirements for other consumer electronics.

II. Current Energy Labeling Requirements

The Commission's Appliance Labeling Rule (16 CFR Part 305) requires energy disclosures for a variety of covered products, including home appliances, lighting, and plumbing products. The Rule requires most covered products to have, at the point of sale, yellow EnergyGuide labels containing estimated annual operating cost information based on Department of Energy (DOE) test procedures. The label information must also appear in catalogs and on Internet sites offering the products for sale.[3] The Rule allows manufacturers to place the U.S. Government ENERGY STAR logo on labels for products that qualify for that program.[4]

III. Previous Consideration of Televisions

In 1979, the Commission determined not to require labeling for televisions because annual energy cost varied little between competing models and because such costs amounted to a small fraction of the purchase price. Thus, the Commission concluded that television labels were unlikely to benefit consumers.[5]

In 2007, the Commission revisited the issue as part of a broad review of the EnergyGuide label's effectiveness.[6] In response, several commenters urged the Commission to require television labels because many modern televisions use as much, or more, electricity than products currently labeled under the Rule. In addition, commenters indicated a significant range of energy use between similar products.[7] In short, television energy consumption has changed significantly since the 1970s.

After considering these comments, the Commission concluded that energy labeling for televisions may assist consumers in purchasing decisions, but noted that the outdated DOE test procedures could not adequately test most televisions.[8] Because the law at that time required DOE test procedures for FTC labels, the Commission could not require television energy disclosures.

IV. FTC's New Authority for Consumer Electronics Labeling

In late 2007, Congress amended the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6294) to authorize the Commission to prescribe labels for televisions and certain other consumer electronics, subject to specific provisions.[9] If DOE publishes applicable test procedures for those specified consumer electronics, the Commission must issue disclosure requirements

[1] EISA amends the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq*).

[2] 74 FR 11045 (Mar. 16, 2009).

[3] The Commission's Rule requires manufacturers of most covered products to file reports with the FTC. These reports must contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to DOE test procedures. 16 CFR 305.8(b).

[4] ENERGY STAR is a voluntary government labeling program that identifies high-efficiency products. The Environmental Protection Agency (EPA) and DOE administer the ENERGY STAR program. *See* (*http://www.energystar.gov*).

[5] 44 FR 66466, 66468 (Nov. 19, 1979).

[6] 72 FR 6836, 6857 (Feb. 13, 2007).

[7] According to the Natural Resources Defense Council (NRDC) comments during the 2007 proceeding, there are many "large-screen" digital televisions on the market that use 500 or more kilowatt-hours per year, as much energy as many new refrigerators. NRDC (#519870-00025). At an FTC public workshop held during the 2007 proceeding, one participant suggested that the average 42-inch plasma television draws 334 watts, with models ranging from 201 watts to 520 watts. Workshop Tr. at 198 (*http://www.ftc.gov/os/comments/energylabeling-workshop/060503wrkshoptrnscript.pdf*).

[8] 72 FR 49948, 49962 (Aug. 29, 2007). *See also* 72 FR at 6858 (Feb. 13, 2007). Until recently, DOE's regulations contained a test procedure created for analog cathode-ray tube (CRT) products and relied on a black and white static test pattern. Since the publication of the ANPR, DOE has repealed its television test procedure. 74 FR 53640 (Oct. 20, 2009).

[9] 42 U.S.C. 6294(a)(2)(I).

within 18 months of DOE's publication. Absent those procedures, the EPCA amendments give the Commission discretion to require disclosures if it identifies adequate non-DOE testing procedures and finds that disclosures will likely assist consumers in making purchasing decisions. Regardless of whether DOE test procedures exist, the Commission cannot require disclosures if those disclosures are not technically or economically feasible.[10] The amended law empowers the Commission to consider other types of energy disclosures in lieu of traditional product labels for these consumer electronics.[11] Finally, the amendments provide the Commission with authority to require labeling or other disclosures for any other consumer product if the FTC determines such labeling is likely to assist consumers in making purchasing decisions.[12]

V. FTC's Advance Notice of Proposed Rulemaking

In response to these amendments, on March 16, 2009, the Commission published an Advance Notice of Proposed Rulemaking seeking comment on the need for energy disclosures for televisions and other consumer electronics.[13] Given the lack of a DOE test procedure applicable to modern televisions, the Notice also sought comment on the adoption of non-DOE test procedures currently used by the ENERGY STAR program. In addition, the Notice requested comment on the appropriate format for any television energy disclosures, specifically asking whether such disclosures should be made using the yellow EnergyGuide label or whether the disclosures should have alternative formats and locations. Finally, the Notice invited comment about the need for energy disclosures for personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, personal computer monitors, and other consumer electronic products.

The Commission received eight comments in response.[14] In this Notice, the Commission first analyzes the comments regarding television labeling, and then discusses the comments regarding other consumer electronics.

VI. Proposed Television Energy Disclosures

The Commission proposes requiring energy disclosures for televisions. Disclosures are appropriate because they likely will help consumers in making purchasing decisions, the disclosures are not technologically or economically infeasible, and there is an adequate energy test procedure. Given these preliminary conclusions, the Proposed Rule would require manufacturers to measure energy use for such disclosures using test procedures recently adopted by the ENERGY STAR program. The television's estimated annual energy cost and use would appear on a newly designed EnergyGuide label affixed to the product itself. Finally, the proposed amendments would require Internet and paper catalog sellers to provide consumers with the same information that appears on the label.

A. The Need For Television Disclosures

Under the EISA amendments, the Commission has authority to require television disclosures if it determines such disclosures are likely to assist consumers in making purchasing decisions. As discussed below, the commenters generally supported energy disclosures[15] for televisions and indicated that they would assist consumers because: 1) these products use a significant amount of energy; 2) energy use among models differs substantially; and 3) consumers are likely to use this information prior to purchase. Moreover, no commenters argued that energy disclosures for televisions are technologically or economically infeasible.

First, the commenters suggest that televisions account for a significant amount of energy use in the home. CEE stated that disclosures are necessary because televisions "are one of the largest energy users within a home . . . their energy use has increased significantly in recent years, and there has been notable technical advancement." Consistent with that view, NRDC estimated in 2004 that televisions account for roughly 1% of the nation's energy use. NRDC further noted that this number has probably increased "due to the growth in screen size, operating hours, and the number of installed TVs." In NRDC's estimation, television "now represents 10 to 20% of a typical home's annual electricity use." Similarly, in a recent study, the California Energy Commission found growth in television energy consumption due to increases in flat panel sales, average screen size, the number of televisions per household as well as lower prices for high definition flat screen digital televisions and enhanced product features (*e.g.*, higher resolution).[16] In addition, according to CEE, ENERGY STAR data indicates that some televisions consume more than 500 kWh per year, as much electricity as many refrigerators.

Second, not only is television energy use large, but it also varies considerably among competing models. Though no comprehensive data is available, some commenters identified significant variations. According to Mitsubishi, for models with 65 inch screen sizes, the power consumption can range from approximately 135 watts to 433 watts. Similarly, for 52 inch LCD models, energy use ranges from 115 watts to 329 watts. In addition, NRDC cited to ENERGY STAR data showing that energy use for 42 inch models ranges from approximately 110 watts to 210 watts.[17] Mitsubishi also indicated that "across display technologies there is even more variance" and that such differences are likely to increase as manufacturers introduce "novel new display technologies." As Motorola noted, in the absence of energy disclosures, even sophisticated consumers cannot determine energy cost variance between models because

[10] 42 U.S.C. 6294(a)(2)(I)(iv).

[11] Specifically, the EPCA empowers the Commission to "prescribe labeling *or other disclosure requirements* for the energy use of" the covered consumer electronic products. 42 U.S.C. 6294(a)(2)(I)(i) (emphasis added).

[12] Under EPCA, a "consumer product" means any article which consumes, or is designed to consume energy and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. 42 U.S.C. 6291(1). As with the five consumer electronic categories specifically listed in the EISA amendments, the FTC may identify a non-DOE test procedure for labeling such additional consumer products (in the absence of a DOE test procedure) and has discretion to require comparative information on the label.

[13] 74 FR 11045 (Mar. 16, 2009).

[14] The comments can be found at (*http://www.ftc.gov/os/comments/tvenergylabels/index.shtm*). Unless otherwise stated, the citations for the comments in this Notice are: Consortium for Energy Efficiency (CEE) #540779-00006; Consumer Electronics Association (CEA) #540779-00007; Consumer Electronics Retailers Coalition (CERC) #540779-00010; Mitsubishi Digital Electronics America, Inc. (Mistubishi) #540779-00005; Motorola, Inc. #540779-00004; Natural Resources Defense Council (NRDC) #540779-00003; New York State Assemblyman Robert Sweeney (Sweeney) #540779-00002; and Lonny Paul (Paul) #540779-00001.

[15] For example, New York State Assemblyman Robert Sweeney wrote that this information will "allow consumers to more easily weigh energy costs in purchasing," and "encourage the design of products with greater energy efficiency . . . ." Similarly, the CERC concluded that "disclosures, properly implemented and executed can help consumers make educated purchasing decisions."

[16] Draft Efficiency Standards for Televisions, Phase 1, Part C, Docket #07-AAER-03-C (*http://www.energy.ca.gov/2008publications/CEC-400-2008-028/CEC-400-2008-028-SD.PDF*) .

[17] *See* NRDC comments; *see also*, (*http://downloads.energystar.gov/bi/qplist/tv_prod_list.pdf*) (ENERGY STAR data).

such information is difficult to calculate.

Third, consumers will likely use energy information in making purchasing decisions because, as explained below, they have an interest in saving energy and, therefore, would likely compare energy efficiency between models. CEA noted data demonstrating widespread consumer concern over rising energy costs and, as a result, greater consumer interest in energy efficient products. According to a CEA study, "89 percent of consumers surveyed ranked energy efficiency as a top consideration for their next television purchase, although price and features remain most influential in actual purchasing decisions." In addition, several commenters suggested that consumers would have even more interest in energy use if they understood how much these products used. For example, NRDC explained that, at present, most consumers are not aware that one television may use two or three times as much energy as a similar model. Moreover, as NRDC noted, retailers often display a variety of models side-by-side to allow consumers to judge picture quality. Thus, because consumers are likely to compare several models while shopping, they are likely to use energy information when they are making their purchasing decision.

Finally, in addition to the consumer benefits, the commenters stated that television labeling is technologically and economically feasible.[18] For example, Mitsubishi wrote that energy testing is inexpensive, nonintrusive, does not involve destruction of or damage to units, and is performed generally in any case for other reasons (such as ENERGY STAR). Similarly, CEA indicated that it "was not aware of any such evidence that argues against providing energy use disclosures for televisions."[19] Indeed, no commenters suggested that energy disclosures would raise economic or technological feasibility questions.

B. Determining Energy Usage

In recent years, the lack of DOE test procedures for modern televisions has served as a barrier to energy disclosures. However, EPCA now authorizes the Commission to use "adequate non-Department of Energy test procedures," and such procedures now exist for televisions. Specifically, EPA's ENERGY STAR program recently adopted criteria for televisions based on specific international procedures (Section 11 of "IEC 62087, Ed. 2.0: Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment" and "IEC 62301, Ed. 1.0: Household Electrical Appliances – Measurement of Standby Power").[20] The procedures require manufacturers to measure the power consumed by televisions when the products are on, and in standby mode (*i.e.*, when the product is switched off).

In the ANPR, the Commission sought comments on these test procedures. Several commenters recommended that the Commission require the IEC procedures as currently adopted by the ENERGY STAR program.[21] These commenters stated that this would ensure uniformity across the U.S. government.[22] Furthermore, no other commenter raised significant concerns with the IEC test or proposed alternative procedures.

Consistent with commenter suggestions, the Commission proposes to require manufacturers to use the IEC procedures as adopted by the ENERGY STAR program. Indeed, the ENERGY STAR criteria offer advantages over the IEC test alone because ENERGY STAR makes mandatory several procedures which the IEC test leaves optional. For instance, the IEC procedure allows the use of either a dynamic or static video signal for testing (*i.e.*, either moving or static images), while ENERGY STAR specifies the use of dynamic images only.[23] In addition, the ENERGY STAR criteria provide more detail regarding the brightness setting under which televisions must be tested because brightness levels can affect a model's energy use. Specifically, ENERGY STAR requires testing at the brightness setting in which the model is shipped. If a model requires consumers to select a brightness mode upon installation (*i.e.*, a forced menu), the manufacturer must test that model at the "home" or "standard" mode. If the model has an automatic brightness control feature which adjusts brightness to ambient light levels, then the ENERGY STAR criteria require testing at a combination of room light levels.[24] Using these various criteria, the ENERGY STAR tests seek to reflect the manner in which consumers are likely to use the product in their homes. Lastly, as noted by the commenters, adopting the ENERGY STAR program requirements will avoid imposing two separate Federal government tests for measuring television energy use.[25]

Finally, the Commission notes two additional issues related to test procedures. First, in a recent notice repealing the existing test procedure, DOE announced that it soon will develop a Federal test procedure and energy efficiency standards for televisions.[26] In doing so, DOE indicated that it "will give serious consideration to the suggestion made by CEA that DOE adopt IEC 62087–2008(E)." Second, CEA stated that it is developing its own version of the test procedure that consolidates ENERGY STAR's requirements into a more detailed protocol ("CEA-2037, Determination of Television Average Power Consumption"). However, to the Commission's knowledge, CEA has not published the protocol. The Commission seeks comments on whether it should wait to finalize disclosure rules until CEA, DOE, or both complete their work.

C. Location, Format, and Content of Energy Disclosures

The Commission proposes specific requirements for television energy labels, including the location, format, and content of the labels. In addition, the Commission proposes requirements for Internet and catalog disclosures.

1. Location

For most products currently covered under the Appliance Labeling Rule, the energy disclosures appear on yellow EnergyGuide labels attached to the products themselves. In its ANPR, the Commission sought comments on the location of television disclosures. Several commenters recommended labeling televisions with an

[18] The Commission cannot require disclosures if it determines they would be technologically or economically infeasible. 42 U.S.C. 6294(a)(2)(I)(iv).

[19] Although the commenters generally supported disclosure requirements, CEA argued that "there should be evidence to show that the buying judgements of a substantial majority of consumers would be affected by the availability of energy use information on products" prior to imposing any disclosure requirements. However, the law does not contain such a "substantial majority" test but, instead, allows disclosure requirements if the Commission finds such disclosures "are likely to assist consumers in making purchasing decisions." 42 U.S.C. 6294(a)(2)(I).

[20] *See* International Electrotechnical Commission (*http://www.iec.ch*); and "ENERGY STAR Program Requirements for Televisions Eligibility Criteria (Version 4.0 and 5.0)" (*http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/television/Final_Version%204_5_TV_Program_Requirements.pdf*).

[21] *See, e.g.*, CEA, CERC, Mitsibushi, and NRDC comments.

[22] CEA and CERC comments.

[23] NRDC urged the Commission to require use of dynamic images.

[24] NRDC suggested that the FTC provide guidance on brightness, including whether to test models in a certain mode or at a certain percentage of full brightness. NRDC asked the FTC to provide standardized guidance on measuring the energy use of models with an automatic brightness feature. The ENERGY STAR criteria offer such a standard.

[25] The Proposed Rule also contains a definition of the term "television" that is consistent with the coverage of ENERGY STAR criteria for televisions.

[26] 74 FR 53640 (Oct. 20, 2009).

EnergyGuide label on the product itself at the point of purchase.[27] For example, Mitsubishi indicated that labels "should substantially follow the existing EnergyGuide format, content, and placement requirements." According to NRDC, consumers continue to make the majority of their individual purchases in stores, despite the fact that some "pre-shop" on the Internet. Similarly, CEE stated that the most effective energy disclosures are displayed while a consumer views televisions for purchase.

Some commenters urged the Commission to avoid imposing undue burdens. For example, CEE emphasized that disclosures should be easy for industry to manage. In addition, CEA urged that the "FTC should carefully consider cost impacts while determining how to best serve consumers and minimize the economic impacts on government, manufacturers, retailers, and distributors." CERC raised particular concerns about the impact of potential requirements on retailers, cautioning in particular against a disclosure regime that required retailers to match labels to products on showroom floors.[28] CERC argued that the manufacturer, not the retailer, is in the best position to label products and noted that disclosure requirements "should be consistent with America's modern and incredibly diverse retail marketplace."

Although most commenters supported in-store product labeling, CEA urged caution and recommended that the Commission conduct research to understand consumer behavior, expectations, and perceptions before proposing any particular disclosure method. Specifically, CEA recommended consumer research on the effectiveness of various disclosure methods, including Internet disclosures, in-store material, product packaging, and product-related printed material.

After considering the comments, the Commission proposes requiring television product labels similar to EnergyGuide labels for appliances. The Commission agrees with commenters that energy labels will help consumers choose televisions in retail stores. Retailers routinely display operating televisions in showrooms and, as NRDC indicated, models often appear in a line on walls or store shelves, allowing consumers to compare products before purchasing. In addition, research conducted in 2006 concluded that online sales accounted for only 6.4 percent of total television units sold.[29] Although this number has likely increased, the Commission has no information to suggest online purchases dominate this market and expects that most consumers comparison shop and/or purchase televisions from brick-and-mortar stores. Furthermore, product labeling is preferable to other disclosure options. Requiring disclosures only on the Internet would not provide information to consumers in the store, where most consumers likely compare performance. Labels on packages, another possible option, would only provide information to consumers where retailers display boxes on the showroom floor.

Although CEA's comments urged the Commission to conduct research on various disclosure methods, the Commission does not believe such research is needed. CEA has offered no evidence that contradicts the commenter observations with regard to product labeling. In the absence of any evidence suggesting that product labeling will not assist consumers in their purchasing decisions, consumer research is unnecessary in this circumstance.

The Commission now seeks comment on the proposed labeling requirement, including evidence disputing or supporting these conclusions. Because some stores place television boxes in the showroom, the Commission also seeks comment on whether the label should be required on the television box, in addition to the product itself.

2. Format

Label format is a particularly important factor for televisions. Unlike many large appliances, televisions have no interior in which to affix a label and much of the product's exterior consists of a viewable screen that consumers want to see while shopping. CERC emphasized that any labeling requirement that obscures the viewable screen diminishes the consumer's ability to evaluate televisions based on performance. Similarly, CERC argued that the label should not interfere with the product's performance, display, or safety.

Other commenters offered specific suggestions about label size and placement. CEE urged that the label be displayed consistently in the same location. Mitsubishi offered three alternatives types of labels: 1) an adhesive label, 2) a hang tag, and 3) a cling label. It also suggested that the Commission configure the label into a triangle shape so that it could fit into the corner of screens, perhaps through a cling label.

After considering the comments, the Commission proposes two options for television EnergyGuide labels: a small rectangular adhesive label affixed either vertically or horizontally on the product's bezel (*i.e.*, the border or frame surrounding the television) or a triangular cling label affixed to the bottom right hand corner of the screen.[30] Thus, the proposed requirements give manufacturers flexibility to account for the configurations of their televisions. Both proposed labels are significantly smaller than the appliance EnergyGuide labels. Examples appear in Figure 1. The small size should minimize any affect the labels have on the aesthetic presentation of televisions in the showroom and should not impair the ability of consumers to compare the performance of competing products. In addition, the proposed labels appear to be consistent with some current industry practices. Specifically, some manufacturers already provide descriptive information (*e.g.*, screen resolution, sound features, and high definition capability) about their televisions through similar adhesive labels on the television bezel or screen.

[27] *See*, *e.g.*, CEE, Mitsubishi, NRDC, and Sweeney comments.

[28] CERC and Paul comments.

[29] "Spending on Consumer Technology Products Increased in 2006 but at a Slower Rate, According to The NPD Group," Feb. 22, 2007 (*http://www.npd.com/press/releases/press_070222.html*).

[30] The Proposed Rule does not contain a hang tag option because such labels on the exterior of products could become easily dislodged.

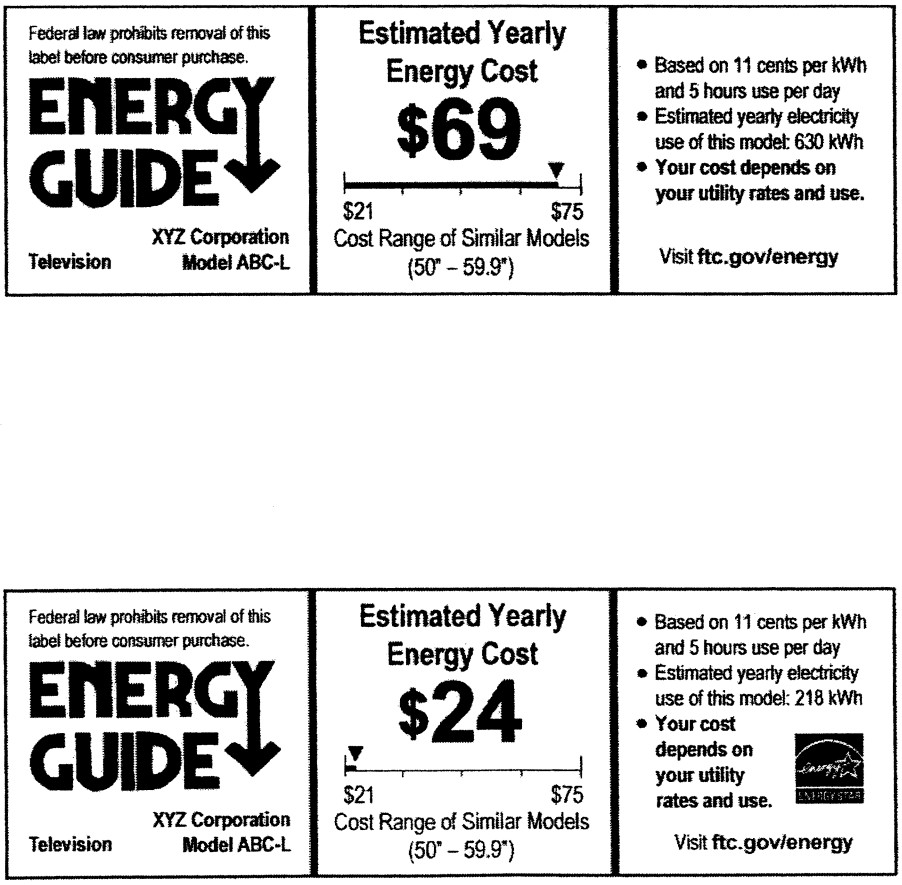


Figure 1

Proposed Television Label

(horizontal version)

The Commission seeks comment on this proposal including whether the proposed labels are appropriate and whether it should consider other point-of-purchase alternatives. In particular, the Commission requests that commenters address whether the rectangular label must appear in a consistent location on the bezel or whether manufacturers should have the flexibility to choose the location. The Commission also seeks comment on whether some television models are too small for the proposed label and, if so, what requirements should apply to such models.

3. Content

In its ANPR, the Commission sought comment on the content of television energy disclosures. The commenters generally provided views on two types of disclosures: product specific disclosures and comparative information. As discussed in more detail below, the Commission proposes requiring product specific information consistent with EnergyGuide labels for other products, including annual energy costs based on a uniform electricity rate of eleven cents per kWh and a usage rate of five hours per day. The Commission also proposes requiring comparative information in the form of a small scale on the label similar to that required on EnergyGuide labels for appliances.

Product Specific Information: Commenters identified annual operating (*i.e.*, energy) cost and energy use as key descriptors in television energy disclosures.[31] In addition, CEA recommended that the disclosure include information about the variability of energy cost in actual use and the electricity rate underlying the cost estimate, similar to information on the EnergyGuide label. Commenters also suggested requiring disclosure of manufacturer name, model number, television type (*e.g.*, plasma, etc.), screen size (measured diagonally), screen resolution, product features that may affect energy use (*e.g.*, integral DVD players or set-top boxes), and the ENERGY STAR logo.[32]

After considering the comments, the Commission proposes disclosure requirements consistent with EnergyGuide labels for other products. Such labels would disclose a television's annual energy cost and energy use. As the Commission has stated before, a "cost disclosure provides a clear, understandable tool to allow consumers to compare the energy performance of different models."[33] Energy cost information also allows consumers to assess trade-offs between energy efficiency and other expenditures.

One commenter, NRDC, suggested that the FTC also consider disclosing lifetime energy cost on the label to help consumers compare the product's total cost over time. CEE disagreed, stating

[31] *See* CEE, CEA, NRDC, and Sweeney comments.

[32] *See, e.g.*, NRDC, Sweeney, and CEE comments.

[33] 72 FR at 49959.

that lifetime information may confuse consumers because such costs do not appear on the EnergyGuide label for other products. The Commission considered a multi-year cost disclosure in its recent proceeding on the EnergyGuide label for appliances.[34] The comments at that time raised concerns that such a disclosure may imply a product's lifetime to consumers and, therefore, introduce confusing assumptions. The Commission believes such concerns remain valid and, therefore, does not propose a multi-year operating cost disclosure for televisions.

In addition to energy cost, the proposed television label would, like EnergyGuide labels for other products, include manufacturer name, model number, and the ENERGY STAR logo (where applicable). This information allows consumers to confirm the identity of the labeled product without crowding the label with information irrelevant to the product's energy use. However, the Proposed Rule does not require information such as screen size, television type, multiple functions (*e.g.*, integral DVD player), and screen resolution. Manufacturers and retailers routinely provide this information through marketing and point-of-sale materials, and, therefore, cluttering the label with this information would not substantially benefit consumers. The Commission seeks comment, however, on whether televisions with additional functions, such as integrated DVD players, are common in the market. If so, the Commission requests comment on whether the label should inform consumers that the annual energy cost does not include the operation of such additional functions. Would such a disclosure likely be helpful or confusing to consumers? Given the size of the label, how should the disclosure be presented?

To calculate annual energy use and energy cost information from test results, manufacturers must have a standard usage rate (*e.g.*, a certain number of viewing hours per day) and a standard electricity cost. The Proposed Rule would require annual cost information using 11 cents per kWh, which is based on 2009 DOE data rounded to the nearest cent.[35]

The commenters had different opinions regarding appropriate usage rates. Several suggested that the FTC require a usage rate of 5 hours per day in on-mode and 19 hours per day in standby (*i.e.*, sleep) mode.[36] The ENERGY STAR program uses these same numbers to provide annual energy use estimates.[37] Other commenters, however, noted recent consumer research suggesting higher actual usage patterns. For example, Mitsubishi stated that recent data suggests the primary television in U.S. households is active 7.1 hours a day. To take into account likely increases in the future, it recommended that the FTC require a usage pattern of eight hours per day. According to NRDC, Nielson data suggested a range between five and eight hours per day. NRDC, however, urged that the FTC and ENERGY STAR use the same assumptions for calculating annual model energy use.

After considering the comments, the Commission proposes five hours a day in on-mode and 19 hours per day in standby mode to calculate annual cost and energy consumption information. This range is consistent with the ENERGY STAR program and within the range of usage data provided by commenters. Furthermore, regardless of the actual average usage rate, the proposed usage pattern of five hours will establish a consistent number that will allow consumers to compare products.

Comparative Information: Comparative information, which the Commission requires on EnergyGuide labels for most appliances, allows consumers to gauge the energy use of a particular product against similar models by displaying the range of energy costs or use of all competing models. The EPCA amendments provide the Commission with discretion to require comparative information in labeling or disclosures.[38]

Given this discretion, the Commission sought comment on whether television energy disclosures should provide comparative information and, if so, how such information should be organized. Commenters provided three different views. First, several urged the Commission to include comparative information, although they disagreed about the basis of the comparison. For example, Mitsubishi suggested disclosing comparative information based on screen size only.[39] Sweeney favored comparative disclosures, but suggested sorting information by technology (such as LCD, plasma, rear-projection) or by the existence of extra accessories bundled with the model (*e.g.*, HDTV with built-in Blu-ray player). Second, CEE proposed gathering information about consumer purchasing behavior before determining whether to require comparative information across all models or categorized by size.

Finally, CEA opposed any comparative data on the label. Specifically, it argued that: (1) the many variables relevant to energy use could add unnecessary complexity to the disclosure, (2) frequent changes in models on the market would make it difficult to establish and maintain reasonable points of comparison, and (3) other sources, including consumer and trade publications and product reviews, will make the required energy disclosures available for consumers.

After reviewing the comments, the Commission proposes to require comparative information on the label grouped by screen size. The endpoints of each range would represent the highest and lowest energy consumption of models on the market. This information should help consumers by illustrating how a particular model compares to similar products on the market. The Commission does not propose to group comparative ranges by technology or screen resolution because this would create separate comparative categories for similar products and thus segregate products that consumers may want to compare (*e.g.*, plasma screens vs. LCD). The Commission proposes ranges of comparability in section 305.17 of the Rule based on current ENERGY STAR data. This data appears to cover most of the products existing on the market and should provide ranges that reasonably reflect models available on the market.[40] The Commission seeks comment on these ranges and whether the Commission should look to other data sources in publishing ranges in the final rule.[41]

[34] 72 FR at 49952-3.

[35] 74 FR 26675 (June 3, 2009).

[36] *See, e.g.*, CEE and CEA comments.

[37] 74 FR at 11048.

[38] 42 U.S.C. 6924(c)(9).

[39] Mitsubishi explained that "Consumers don't shop for a LCD television, for example: they shop for a 60″ television and evaluate their options." It urged the Commission to limit comparison information to screen size for <20″ diagonal televisions, then by 10″ (diagonal) increments thereafter (*e.g.*, 20-29, 30-39, 40-49, 50-59, 60-69, 70-79, 80-89, 90-99.).

[40] *See, e.g.*, "Stricter Energy Star Standards for TVs Coming - Again," Electronic House, May 28, 2009 (*http://www.electronichouse.com/article//stricter_energy_star_standards_for_tvs_coming_again/*) ("Most TVs on the market can meet the [current ENERGY STAR] spec."). The ENERGY STAR program has recently issued much more stringent criteria which will go into effect May 1, 2010. *See* ENERGY STAR Program Requirements for Televisions Partner Commitments Versions 4.0 and 5.0 (*http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/television/Final_Version%204_5_TV_Program_Requirements.pdf*). If a model's energy cost falls outside the high or low end of the comparability range, the Commission proposes to require that manufacturers place the product on the very end of the scale (the high or low end as appropriate). 16 CFR § 305.17(f)(6).

[41] Because the EPCA annual reporting requirements depend on the existence of a DOE test

Finally, the Commission does not find CEA's arguments against including comparative information on the label compelling. First, the proposed comparative information is fairly simple (consisting of two cost numbers on a scale) and there are no variables involved that would make it unnecessarily complex as suggested by CEA. Second, although frequent market changes may affect the ranges, the FTC can amend the ranges if substantial changes occur just as it does for appliance labels. If substantial changes occur so frequently that the benefit of the comparative information becomes questionable, the Commission can consider eliminating such information altogether from the television label. Finally, publications and product reviews cannot replace the benefits of providing uniform comparative information to consumers in the store at the point of purchase.

Other Information: As an alternative to the EnergyGuide format, NRDC suggested a five-star efficiency rating system, arguing that a categorical, stars-based approach would yield superior results to information provided in the EnergyGuide label. In 2007, the Commission considered five-star rating systems during the EnergyGuide label proceeding and, more recently, in developing changes to light bulb labels. In both cases, the Commission determined not to propose such a system, in part, because of potential confusion with the ENERGY STAR program.[42] Given the recent examination of this issue, the Commission does not propose such a rating system for televisions.

4. Catalog Disclosures

As directed by EPCA, section 305.20 of the current Appliance Labeling Rule requires any manufacturer, distributor, retailer, or private labeler who advertises in a catalog (*i.e.*, those publications, including websites, from which a consumer can order merchandise), to disclose energy information about the product to consumers.[43] This requirement helps ensure that consumers buying products online receive the same energy information as those in brick-and-mortar stores. Moreover, in response to the ANPR, several commenters suggested that the FTC require energy disclosures for web-based television sellers.[44] In particular, some commenters suggested requiring the energy disclosure or an electronic version of the label on websites.[45]

In light of the current Rule and the comments, the Commission proposes requiring Internet and paper catalog sellers to post energy cost information. The Commission has identified no reason to treat online and paper catalog televisions sales differently than other covered products. Sellers commonly offer televisions through retail websites. As with product labels in the store, energy information offered online should help consumers compare the energy use of competing products. Consistent with current requirements for appliances, the Proposed Rule provides the option of posting an image of the EnergyGuide label itself or providing separate energy information derived from the product's EnergyGuide label.

D. Timing of Proposed Requirements

The EPCA amendments state that any FTC labeling or disclosure requirements for consumer electronics shall be effective "not later than" 18 months after promulgation.[46] The Commission believes that six months will be adequate to allow for testing and labeling of products. Products manufactured thereafter would require a label. The Commission seeks comment on the proposed six month period.[47] Suggestions for longer time periods should be accompanied by specific information justifying the need for additional time.[48]

VII. Other Consumer Electronics

The Commission also sought comments about labeling requirements for cable or satellite set-top boxes, stand-alone digital video recorder boxes, personal computers, personal computer monitors, and other consumer electronics. Some commenters urged the Commission to consider developing labels for these products. For example, CEE and NRDC stated that the products use significant amounts of energy, there is a significant range of energy use among models, and consumers would likely benefit from energy disclosures for electronics. CEE and NRDC specifically recommended that the Commission also consider labeling game consoles, multi-function devices, and audio/visual equipment. To measure the energy consumption of electronics, CEE and NRDC recommended that the Commission consider ENERGY STAR program test procedures. Additionally, CEA suggested that, before moving forward, the Commission carefully consider each product separately.[49] The Commission agrees and, therefore, discusses each product below.

Cable and Satellite Set-top Boxes: According to a 2007 study from CEA, these devices use approximately 130 kWh per year.[50] Moreover, ENERGY STAR data suggests that there is a range of energy use among qualified models.[51] In addition, there appears to be an appropriate method to determine energy consumption for these products, specifically, the ENERGY STAR program test procedure.[52]

Despite the energy use of these products, the variation in energy use among models, and the existence of a test procedure, Motorola argued that energy disclosures for set-top boxes would provide little benefit to consumers. Specifically, Motorola stated that consumers generally do not purchase set-top boxes at retail.[53] Instead, consumers usually lease these products from their service provider (*e.g.*, cable operator), and do not have the opportunity to comparison shop for different models. CEA additionally stated that service providers often install software in these devices that can change the product's energy consumption, which could complicate

procedure and no such procedure exists for televisions, the Proposed Rule does not contain such reporting requirements. 42 U.S.C. 6296(b)(4). When DOE completes its test procedure for televisions, the Commission will revisit this issue.

[42] 72 FR at 6844-46 (EnergyGuide label); and 74 FR 57950 (Nov. 10, 2009) (light bulb labeling). Both studies suggested that the five-star rating system was more likely to cause confusion with regard to ENERGY STAR than other methods of communicating energy use.

[43] EPCA indicates that catalogs must "contain all information required to be displayed on the label, except as otherwise provided by the rule of the Commission." 42 U.S.C. 6296(a).

[44] *See, e.g.*, NRDC, CEE, Mitsubishi, and Sweeney comments.

[45] *See* NRDC and Mitsubishi comments.

[46] 42 U.S.C. 6294(a)(2)(I)(iii).

[47] The six month period is consistent with EPCA's mandate that manufacturers test and re-label their products at least 180 days after DOE changes an applicable test procedure. 42 U.S.C. 6293(c).

[48] The Commission notes that on November 18, 2009, the California Energy Commission approved final regulations for televisions that included energy efficiency standards and energy disclosures. Beginning in 2011, the regulations require manufacturers to mark units permanently with the "on" mode power consumption in watts and to disclose a model's watts wherever the product's dimensions appear in any "publication, website, document, or retail display that is used for sale or offering for sale of a television."

[49] As they did with televisions, CEA argued that the Commission should identify evidence that disclosures would impact the purchasing decisions of a substantial majority of consumers. As discussed above, the statute contains no such test.

[50] "Energy Consumption by Consumer Electronics in U.S. Residences," CEA (2007) at 26 (*http://www.ce.org/pdf/Energy%20Consumption%20by%20CE%20in%20U.S.%20Residences%20%28January%202007%29.pdf*) (CEA Study).

[51] *See* (*http://www.energystar.gov/ia/products/prod_lists/set_top_boxes_prod_list.pdf*).

[52] *See* (*http://www.energystar.gov/ia/partners/product_specs/program_reqs/set_top_boxes_prog_req.pdf*).

[53] Motorola comments; *see also* CEA comments.

efforts to provide consumers with accurate information.

Given the issues raised by Motorola and CEA, the Commission does not propose requiring energy labeling or disclosures for set-top boxes at this time. The Commission, however, seeks further comment on this issue. Although consumers do not purchase set-top boxes at retail, they may comparison shop for different cable or satellite service providers. If these providers were to disclose the energy use of the boxes they lease as part of their service, consumers could theoretically use this information in deciding which service provider to choose. The Commission, therefore, requests comment on whether such disclosures would, in fact, be likely to assist consumers in their purchasing decisions. If so, the Commission also seeks comment on how energy use information should be disclosed to consumers (*e.g.*, on service providers' websites). Disclosures for these products are challenging because consumers are unlikely to see labels on set-top boxes and the record contains no information about how consumers shop for cable or satellite service providers (*e.g.*, online, by telephone, etc.). The Commission also seeks comment on whether the range of energy use among models is significant, whether disclosure of comparability ranges would be useful to consumers, whether there should be one range for all set-top boxes, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission seeks comment on whether the ENERGY STAR test procedure for set-top boxes is an appropriate method of calculating energy consumption. Would this procedure yield an accurate estimate of annual energy consumption if third parties later install software in the boxes?

Stand-alone Digital Video Recorder (DVR) Boxes: According to CEA's 2007 study, these products use approximately 237 kWh per year.[54] CEA states, however, that there currently is no test procedure to measure energy consumption for these products.[55] CEA noted that it was working on test procedures through the industry standards development process.

Given the apparent lack of an appropriate test procedure, the Commission does not propose labeling at this time. The Commission, however, requests further comment on whether an industry test procedure has been completed or whether other procedures, such as the ENERGY STAR set-top box procedure, are appropriate for measuring the energy use of all stand-alone DVRs. The Commission also seeks comment on whether there are estimates of typical consumer use of these products, which could be used to calculate annual energy consumption. In addition, the Commission seeks comment on whether there are significant differences in energy consumption between competing DVR models. This information could affect whether disclosures are likely to be useful to consumers and whether disclosure of comparability ranges would be appropriate. If the Commission were to require disclosure of comparability ranges, should there be one range for all DVR models? Is there comprehensive industry data on which to base such ranges? Finally, to evaluate how energy disclosures might be presented, the Commission requests comment on how consumers typically shop for these products. For example, if DVRs are displayed in retail stores out of the box, energy information could be provided on either a label or hangtag attached to the product. If DVRs are not displayed in that way, energy information might be provided on a label attached to the box.

Personal Computers: According to CEA's 2007 study, desktop computers use approximately 237 kWh per year and notebook computers use approximately 72 kWh per year.[56] Moreover, ENERGY STAR data suggests that there is a range in energy use among qualified models.[57] However, the ENERGY STAR program test procedure only derives estimates of annual energy consumption in off, sleep, and idle modes.[58]

Moreover, CEA raised concerns about requiring energy use disclosures for all computers. CEA explained that consumers often purchase computers by selecting among different components, including processors, memory, and drives. Such choices may affect the energy use of the finished product. Therefore, CEA stated that it would be administratively complex to provide energy disclosures for these various combinations, and the FTC should consider requiring disclosures for only "basic" or "typical" computers.[59]

Given the potential limitations of the ENERGY STAR test procedure as well as the concerns raised by CEA, the Commission does not propose labeling at this time, but instead seeks further comment. Specifically, the Commission seeks comment on whether energy use information should be derived using the current ENERGY STAR test procedure (and, if so, whether a disclosure based on energy use only in off, sleep, and idle modes would be helpful or confusing to consumers), or whether there are other appropriate test procedures for measuring energy use. Additionally, the Commission requests comment on whether it should require disclosures for multiple computer configurations and, if so, how such disclosures should be made given the potentially large number of configurations. If the Commission should require disclosures only for certain "basic" models, which ones should be covered and why? Would these disclosures provide misleading energy use information if consumers typically modify the "basic" computer configuration? Moreover, the Commission seeks comment on whether the range of energy use among models is significant, whether disclosure of comparability ranges would be useful to consumers, whether there should be one range for all computers or separate ranges for desktops and notebooks, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission requests comment on how consumers shop for computers and how disclosures should be presented (*e.g.*, a label on a display model, a label on the box, online, etc.).

Personal Computer Monitors: According to CEA's 2007 study, computer monitors typically use 85 kWh per year.[60] Additionally, ENERGY STAR data suggests that there is a range of energy use among qualified products.[61] Moreover, the ENERGY STAR program has a procedure to measure energy consumption, but it currently tests monitors using a static (*i.e.*, fixed screen) image.[62]

Because a static image test may not provide energy use figures that reflect typical consumer use of computer monitors and because the ENERGY STAR procedure does not specify a method for calculating annual energy consumption, the Commission does not propose labeling monitors at this time. The Commission, however, requests further comment on this issue. Specifically, the Commission seeks comment on whether it should require disclosures based on the current

[54] CEA Report at 26.

[55] *See* CEA comments.

[56] *Id.*

[57] *See* (*http://downloads.energystar.gov/bi/qplist/computers_prod_list.pdf*).

[58] *See* (*http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/computer/Version5.0_Computer_Spec.pdf*).

[59] *See* CEA comments.

[60] CEA Study at 26.

[61] *See* (*http://www.energystar.gov/ia/partners/product_specs/qpi/displays_prod_list.pdf*).

[62] *See* (*http://www.energystar.gov/ia/partners/product_specs/program_reqs/displays_spec.pdf*).

ENERGY STAR test procedure that measures consumption based on a fixed screen image, whether the IEC test for televisions is appropriate for measuring energy consumption of computer monitors, or whether other, appropriate industry test procedures exist. The Commission also requests information about what use estimates it should rely upon to calculate the annual energy consumption of computer monitors. Additionally, the Commission seeks comment on whether the range of energy use among models is significant, whether to require disclosure of comparability ranges, whether there should be one range for all models, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission requests comment on how consumers shop for computer monitors and how energy use disclosures should be presented to consumers (*e.g.*, a label on a display model, a label on the box, online, etc.).

Game Consoles: Although the CEA's 2007 study indicates that game consoles use approximately 36 kWh per year, NRDC's more recent analysis indicates that they can use as much as 1000 kWh per year.[63] NRDC's study also found a wide variation of energy use among brands. The NRDC's study recommended collaborative efforts to develop a standard test procedure for these products.[64] Although the ENERGY STAR program currently contains a test procedure for game consoles in off and sleep modes, the program is in the process of considering additional criteria.[65]

Because there does not appear to be an industry test procedure and the ENERGY STAR program currently is reviewing its procedure, the Commission does not propose energy disclosures at this time. The Commission requests comment, however, on whether it should require such disclosures based on the existing ENERGY STAR test procedure (and, if so, whether a disclosure based on off and sleep modes would be helpful or confusing for consumers), whether it should wait for any revised ENERGY STAR test procedures, or whether other, appropriate test procedures exist. The Commission also seeks information about use estimates for calculating the annual energy consumption of game consoles. Additionally, the Commission requests comment on whether it should require disclosure of comparability ranges, whether there should be one range for all models, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission requests comment on how consumers shop for game consoles and how energy use disclosures should be presented to consumers (*e.g.*, a label on a display model, a label on the box, online, etc.).

Multi-function Devices (MFDs):[66] Although there is no information on the record concerning MFDs' typical energy use, ENERGY STAR data suggests a range of energy consumption among models.[67] The ENERGY STAR program test procedures for MFDs apply to personal, business, and commercial products.[68] These procedures yield weekly energy consumption figures and they appear to reflect certain assumptions of how many hours the product is used in a business setting (*e.g.*, assuming no usage on weekends).

Based on these facts, it appears that some MFDs may not used by individual consumers. If that is the case, the Commission may not have authority to require energy disclosures for those MFDs. Specifically, the Commission only has the authority to require energy disclosures for "consumer products," which EPCA defines as any article that consumes energy and "to any significant extent, is distributed in commerce for personal use or consumption by individuals."[69] The Commission cannot propose labeling for MFDs until it gathers more information about the extent to which these products are sold for personal use.

The Commission, therefore, seeks comment on whether some MFDs are typically purchased for personal use. The Commission also requests comment on whether the ENERGY STAR test procedure is appropriate to calculate energy consumption for individuals' use of MFDs, whether there are other, appropriate test procedures, and whether there are estimates of individual MFD use for calculating annual energy consumption. Moreover, the Commission requests comment on whether the range of energy use among models is significant, whether it should require disclosure of comparability ranges, whether there should be one range for all models, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission requests comment on how consumers shop for MFDs and how energy disclosures should be presented (*e.g.*, a label on a display model, a label on a box, etc.).

Audio-visual (A/V) Equipment: The ENERGY STAR program defines consumer A/V products to include "cassette decks, CD players/changers, CD recorders/burners, clock radios, DVD & Blu-ray Disc products, equalizers, laserdisc players, mini- and midi-systems, minidisc players, powered speakers, rack systems, stereo amplifiers/pre-amplifiers, stereo receivers, table radios, and tuners."[70] The program has test procedures for these A/V products, but they do not specify a method of calculating their annual energy consumption. The CEA's 2007 study provides approximate energy use information for some types of these A/V products,[71] but the Commission does not have information about the range of annual energy consumption of each specific product.

Because the Commission lacks information on calculating annual energy use and about the ranges of annual energy use, it does not propose labeling A/V equipment at this time. The Commission, however, requests further comment about each specific type of A/V equipment. Specifically, for each particular type of A/V equipment, are there significant variations in energy use among models and is labeling likely to benefit consumers in their purchasing decisions? The Commission also seeks comment on whether the ENERGY STAR test procedures are appropriate for measuring energy use or whether there are other, appropriate test procedures. Additionally, the Commission seeks information on use estimates for calculating each product's annual energy consumption. Moreover, the Commission requests comment on whether it should require disclosure of comparability ranges, whether there should be a separate range for each type of A/V product or whether ranges should combine certain types, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission seeks comment on how consumers typically

[63] CEA Study at 26; "Lowering the Cost of Play: Improving the Energy Efficiency of Video Game Consoles," NRDC (Nov. 2008) (*http://www.nrdc.org/energy/consoles/files/consoles.pdf*) (NRDC Study).

[64] NRDC Study at 25.

[65] *See* (*http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/computer/Version5.0_Computer_Spec.pdf*).

[66] The ENERGY STAR program defines an MFD as a product that performs two or more of the core functions of copying, printing, scanning, or faxing. *See* (*http://www.energystar.gov/ia/ partners/product_specs/program_reqs/Imaging%20Equipment%20Specifications.pdf.*)

[67] *See* (*http://downloads.energystar.gov/bi/qplist/image_equip_prod_list.pdf*).

[68] *See* (*http://www.energystar.gov/ia/partners/product_specs/program_reqs/Imaging%20Equipment%20Specifications.pdf*).

[69] 42 U.S.C. 6291(1).

[70] *See* (*http://www.energystar.gov/ia/partners/product_specs/program_reqs/AV_V2_Specification.pdf*).

[71] For example, DVD players and DVD/VCR combos use 36 kWh per year, while a home theater in a box uses 89 kWh per year. CEA Study at 26.

shop for each product and how energy disclosures for each product should be presented.

VIII. Section by Section Description of Proposed Changes

Definition of Television (section 305.3): The proposed amendments add a definition of televisions that is consistent with the definition used by the ENERGY STAR program.[72]

Testing Requirements (section 305.5): The proposed amendments require manufacturers to follow the test procedures required by the ENERGY STAR program.

Minor Conforming Changes (305.8 and 305.8): The Proposed Rule makes minor, conforming changes to sections 305.8 (data submission) and 305.10 (ranges of comparability) to clarify that these sections do not apply to televisions.

Product Labeling (section 305.17)): The proposed amendments require manufacturers to affix EnergyGuide labels to televisions on either the product's bezel or its screen in the form of a small rectangular or triangular label. The primary disclosure on the label would be the product's estimated annual energy cost.

Catalog Requirements (section 305.20): The proposed amendments require catalog sellers (including web-based catalogs) to provide, for each television, the same information required on the EnergyGuide label.

IX. Request for Comment and Public Meeting Information

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the FTC's proposed labeling requirements. Please provide explanations for your answers and supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue final amendments.

All comments should be filed as prescribed in the "ADDRESSES" section above, and must be received on or before May 14, 2010. In addition to the questions and requests for comment found throughout this Notice, the Commission also asks that commenters address the following questions: What costs or burdens, and any other impacts, would the proposed requirements impose, and on whom? What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements? How would such alternatives affect the benefits provided by the Proposed Rule?

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Consumer Electronics Labeling, Project No. P094201" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[73]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/ftc/tvdisclosures*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/tvdisclosures*). If this Notice appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Consumer Electronics Labeling, Project No. P094201" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

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

The Commission staff has scheduled a public meeting to give interested parties an opportunity to provide their views on issues related to the Proposed Rule for televisions and potential disclosure requirements for other consumer electronics.[74] The details of this public meeting are as follows:

Meeting Time and Location: The public meeting will be held on April 16, 2010, from 9:00 a.m. to 1:00 p.m. at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue, NW, Washington, DC.

Meeting Information: The public meeting will include participation by selected panelists. Other attendees also will have an opportunity to present

[72] The Proposed Rule excludes a sentence in the ENERGY STAR definition that reads: "The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display device." Such a list of examples is not necessary in a regulatory definition.

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

[74] In comments, both the CERC and CEA urged the Commission to hold a public meeting. *See* (*http://www.ftc.gov/os/comments/tvenergylabels/index.shtm*).

their views and ask questions. There is no fee for attendance. A stenographer will record the proceedings, and the Commission will place the transcription on the public record. For admittance to the Conference Center, all attendees must show a valid photo identification such as a driver's license. The FTC will accept pre-registration for this meeting. Pre-registration is not necessary to attend, but is encouraged. To pre-register, please email your name and affiliation to (*televisionmeeting@ftc.gov*). When you pre-register, we will collect your name, affiliation, and your email address. The Commission will use this information to estimate how many people will attend. We may use your email address to contact you with information about the workshop.

Under the Freedom of Information Act (FOIA) or other laws, we may be required to disclose to outside organizations the information you provide. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at (*www.ftc.gov/ftc/privacy.shtm*). The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

X. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute "information collection requirements" as defined by 5 CFR § 1320.7(c), the regulation that implements the Paperwork Reduction Act (PRA).[75] OMB has approved the Rule's existing information collection requirements through May 31, 2011 (OMB Control No. 3084-0069). The proposed amendments would require television manufacturers to test and label their products with energy information and to maintain records for two years after a product model is discontinued. It would also require paper and website catalog sellers of televisions to provide energy information. Accordingly, the Commission is submitting a related clearance request to OMB for review under the PRA.

The following burden estimates for the Proposed Rule amendments (cumulatively, 57,450 hours for recordkeeping, testing, and disclosure at an associated labor cost of $834,680) are based on data submitted by manufacturers to the FTC under current requirements and FTC staff's general knowledge of manufacturing practices.

Testing: Manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. Staff believes that the frequency with which models are tested every year ranges roughly between 10% and 50%. It is likely that only a small portion of the tests conducted is attributable to the Rule's requirements. Nonetheless, given the lack of specific data on this point, the Commission conservatively assumes that all of the tests conducted would be attributable to the Rule's requirements and will apply to that assumption the high-end of the range noted above for frequency of testing. Staff estimates that there are approximately 2,000 basic models, two units per model, and that testing per unit would require one hour per unit tested. Given these estimates and the above-noted assumption that 50% of these basic models would be tested annually, testing would require 2,000 hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of $39.79 per hour,[76] labor costs for testing would total $79,580.

Recordkeeping: Pursuant to section 305.21 of the Rule, manufacturers must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 2,000 basic models, the recordkeeping burden would total 33 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of $13.53 per hour,[77] the associated labor cost for recordkeeping would be approximately $450 per year.

Disclosures (Product Labeling): The Proposed Rule requires manufacturers to create and affix labels on televisions. The Rule specifies the content, format, and specifications of the required labels. Manufacturers would only add the energy consumption figures derived from testing and other product-specific information. Consistent with past assumptions regarding appliances, FTC staff estimates that it will take approximately six seconds per unit to affix labels. Staff also estimates that there are 33,000,000 television units distributed in the U.S. per year.[78] Accordingly, the total disclosure burden for televisions would be 55,000 hours (33,000,000 x 6 seconds). Assuming that product labels will be affixed by electronic equipment assemblers at an hourly wage of $13.61 per hour,[79] cumulative associated labor cost would total $748,550 per year.

Catalog Disclosures: The Proposed Rule would require sellers offering covered products through retail sales catalogs (*i.e.*, those publications from which a consumer can actually order merchandise) to disclose energy use for each television model offered for sale. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

Commission staff estimates that there are 50 online and paper catalogs for televisions that would be subject to the Rule's catalog disclosure requirements. Staff additionally estimates that the average catalog contains approximately 500 televisions and that entry of the required information takes one minute per covered product; thus, 9 hours per catalog seller. The cumulative disclosure burden for catalog sellers is thus 450 hours (50 sellers x 9 hours annually). Assuming that the additional disclosure requirement will be implemented by data entry workers at an hourly wage rate of $13.53 per hour,[80] associated labor cost would approximate $6,100 per year.

Estimated annual non-labor cost burden: Manufacturers are not likely to require any significant capital costs to comply with the Proposed Rule. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on estimates of 33,000,000 units

[75] 44 U.S.C. 3501-3521.

[76] *See* (*http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables*) ("National Compensation Survey: Occupational Earnings in the United States, 2008", U.S. Department of Labor, August 2009, Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-4).

[77] *See* (*http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables*) ("National Compensation Survey: Occupational Earnings in the United States, 2008," U.S. Department of Labor, August 2009, Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-24).

[78] *See* "ENERGY STAR Unit Shipment and Market Penetration Report Calendar Year 2008 Summary," (*http://www.energystar.gov/ia/partners/downloads/2008_USD_Summary.pdf*), at 5 (approximately 26 million television units shipped in 2008, constituting 79% market penetration; 26,000,000 ÷ .79 = 33,000,000).

[79] See (*http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables*) (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor (August 2009), Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-30).

[80] *See* (*http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables*) ("National Compensation Survey: Occupational Earnings in the United States, 2008", U.S. Department of Labor, August 2009, Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-24).

and $.03 per label, is $990,000 (33,000,000 x $.03).

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to OMB review under the PRA should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to lengthy delays due to heightened security precautions.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[81]

The Commission does not anticipate that the Proposed Rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the label design will be significant. The Commission plans to provide manufacturers with ample time to implement the requirements. The Commission estimates that these new requirements will apply to about 30 product manufacturers and an additional 50 online and paper catalog sellers of covered products. Out of these companies, the Commission expects that approximately 40 catalog sellers qualify as small businesses. In addition, the Commission does not expect that the requirements specified in the Proposed Rule will have a significant impact on these entities.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the Proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the Proposed Rule, the number of these companies that are "small entities," and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this Notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the Proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

Section 321(b) of the Energy Independence and Security Act of 2007 (Pub. L. 110-140) authorizes the Commission to conduct a rulemaking to consider the effectiveness of the television labeling and to consider alternative labeling approaches.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the Proposed Rule is to provide television energy use information to consumers. EISA provides the Commission with authority to require energy disclosures for televisions and other consumer electronics.

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, television manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees) or if their sales are less than $8.0 million annually. The threshold for television retailers is $9.0 million. The Commission estimates that fewer than 40 entities (all retailers) subject to the Proposed Rule qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the Proposed Rule would have a significant economic impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the proposed labeling rule will involve some increased costs related to testing, drafting labels, affixing labels to products, and maintaining test records. The Proposed Rule does not impose any reporting requirements. All of these burdens and the skills required to comply are discussed in the previous section of this document, regarding the Paperwork Reduction Act, and there should be no difference in that burden as applied to small businesses. As explained earlier, the Commission estimates that there are only about 40 catalog sellers under the Proposed Rule that would qualify as such entities. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the Proposed Rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. As one alternative to reduce burden, the Commission could delay the Rule's effective date to provide additional time for small business compliance. The Commission could also consider further reductions in the amount of information catalog sellers must provide. Finally, the Commission has considered requiring disclosures through the Internet instead of through product labels. However, as discussed earlier, such an approach would not provide information to consumers in the store, where most consumers compare televisions performance. If the comments filed in response to this Notice identify small entities that would be affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on such entities, the Commission will consider the feasibility of such alternatives and

[81] 5 U.S.C. 603-605.

determine whether they should be incorporated into the final rule.

XII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

XIII. Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons set out above, the Commission proposes the following amendments to 16 CFR Part 305:

PART 305—[AMENDED]

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3., add new paragraph (u) to read as follows:

§ 305.3 Description of covered products.

(u) *Television (TV)* means a commercially available electronic product designed primarily for the display and reception of audiovisual signals from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other transmission of analog and/or digital signals, consisting of a tuner/receiver and a display encased in a single housing.

■ 3. In § 305.5, add new paragraph (d) to read as follows:

Testing

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

* * *

(d) Determinations of estimated annual energy consumption and the estimated annual operating (energy) costs of televisions must be based on the procedures contained in "ENERGY STAR Program Requirements for Televisions Eligibility Criteria Versions 4.0 and 5.0." Annual energy consumption and cost estimates must be derived assuming 5 hours in on mode and 19 hours in sleep (standby) mode per day. These ENERGY STAR requirements are incorporated by reference into this section. These incorporations by reference were approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be obtained at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580; at the National Archives and Records Administration (NARA); or from the Environmental Protection Agency at (*http://www.energystar.gov*). For information on the availability of this material at NARA, call (202) 741-6030, or go to: (*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*). Copies of materials and standards incorporated by reference also may be obtained from the issuing organizations listed in this section.

■ 4. In 305.8(a)(1), add the term "televisions," after the term "urinals,".

■ 5. In § 305.10(a), remove the phrase "or ceiling fans" and add in its place the phrase "ceiling fans, and televisions".

■ 6. Add § 305.17 to read as follows:

§ 305.17 Television labeling.

(a) *Layout.* All energy labels for televisions shall use one of three shapes: a triangle, horizontal rectangle, and vertical rectangle as detailed in Prototype Labels 8, 9, and 10 in Appendix L. All label size, positioning, spacing, type sizes, positioning of headline, copy, and line widths must be consistent with the prototype and sample labels in Appendix L. The minimum label size for the adhesive label is 1.5″ x 4.7″. The minimum size for the cling tag triangle label is 4.2″ x 4.2″ (right angle sides).

(b) *Type style and setting.* The Arial series typeface or equivalent shall be used exclusively on the label. Specific sizes, leading, and faces to be used are indicated on the prototype labels. No hyphenation should be used in setting headline or copy text. Positioning and spacing should follow the prototypes closely. See the prototype labels for specific directions.

(c) *Colors.* The basic colors of all labels covered by this section shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be printed process black.

(d) *Label types.* The labels must be affixed to the product in the form of an adhesive label or cling label as follows:

(1) *Adhesive labels.* All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25x38) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.

(2) *Cling labels.* Labels may be affixed, using the screen's static charge, to the product in the form of a cling label. The cling label shall be affixed in a way that prevents its dislodgment during normal handling throughout the chain of distribution to the retailer or consumer.

(e) *Placement —*

(1) *Adhesive labels.* Manufacturers shall affix adhesive labels on the product's bezel adjacent to the viewable screen in such a position that it is easily read by a consumer examining the product.

(2) *Cling label.* A cling label shall be affixed at the bottom right hand corner of the screen in a position that it can be easily read by a consumer examining the product.

(f) *Label content.* The television label shall contain the following information:

(1) Headlines, texts, and statements as illustrated in the prototype and sample labels in Appendix L to this part.

(2) Name of manufacturer or private labeler. This requirement shall, in the case of a corporation, be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(3) Model number(s) as designated by the manufacturer or private labeler.

(4) Estimated annual energy costs determined in accordance with § 305.5 to this part and based on a usage rate of 5 hours in on mode and 19 hours in standby (sleep) mode per day, and an electricity cost rate of 11 cents per kWh.

(5) The applicable ranges of comparability for estimated annual energy costs based on the labeled product's diagonal screen size, according to the following table:

Screen Size (diagonal)	Annual Energy Cost Ranges for Televisions	
	Low	High
0 to 19.9″	$4	$11
20 to 29.9″	$4	$19

Screen Size (diagonal)	Annual Energy Cost Ranges for Televisions	
	Low	High
30 to 39.9″	$11	$31
40 to 49.9″	$15	$ 62
50 to 59.9″	$21	$75
60 to 69.9″	$31	$83
70″ or more	$39	$90

(6) Placement of the labeled product on the scale proportionate to the lowest and highest estimated annual energy costs as illustrated in prototype and sample labels in Appendix L. When the estimated annual energy cost of a given model of a covered product falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall place the product at the end of the range closest to the model's energy cost.

(7) The model's estimated annual energy consumption as determined in accordance with § 305.5 and based on a usage rate of 5 hours in on mode and 19 hours in sleep (standby) per day.

(8) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(ii) The manufacturer may include the ENERGY STAR logo on the label as illustrated in Sample Labels 10, 11, and 12 in Appendix L. The logo must be 0.375″ wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are covered by the Memorandum of Understanding.

■ 7. In § 305.20, add new paragraph (g) to read as follows:

§ 305.20 Paper catalogs and websites.

(g) Any manufacturer, distributor, retailer, or private labeler who advertises televisions in a catalog shall include in such catalog either:

(1) The EnergyGuide labels prepared in accordance with § 305.17 for products they offer; or

(2) the estimated annual energy costs determined in accordance with § 305.5, and the following statement conspicuously placed in the catalog: "Your energy costs will depend on your utility rates and use. The estimated energy cost is based on 5 hours of use per day and an electricity cost of 11 cents per kWh.

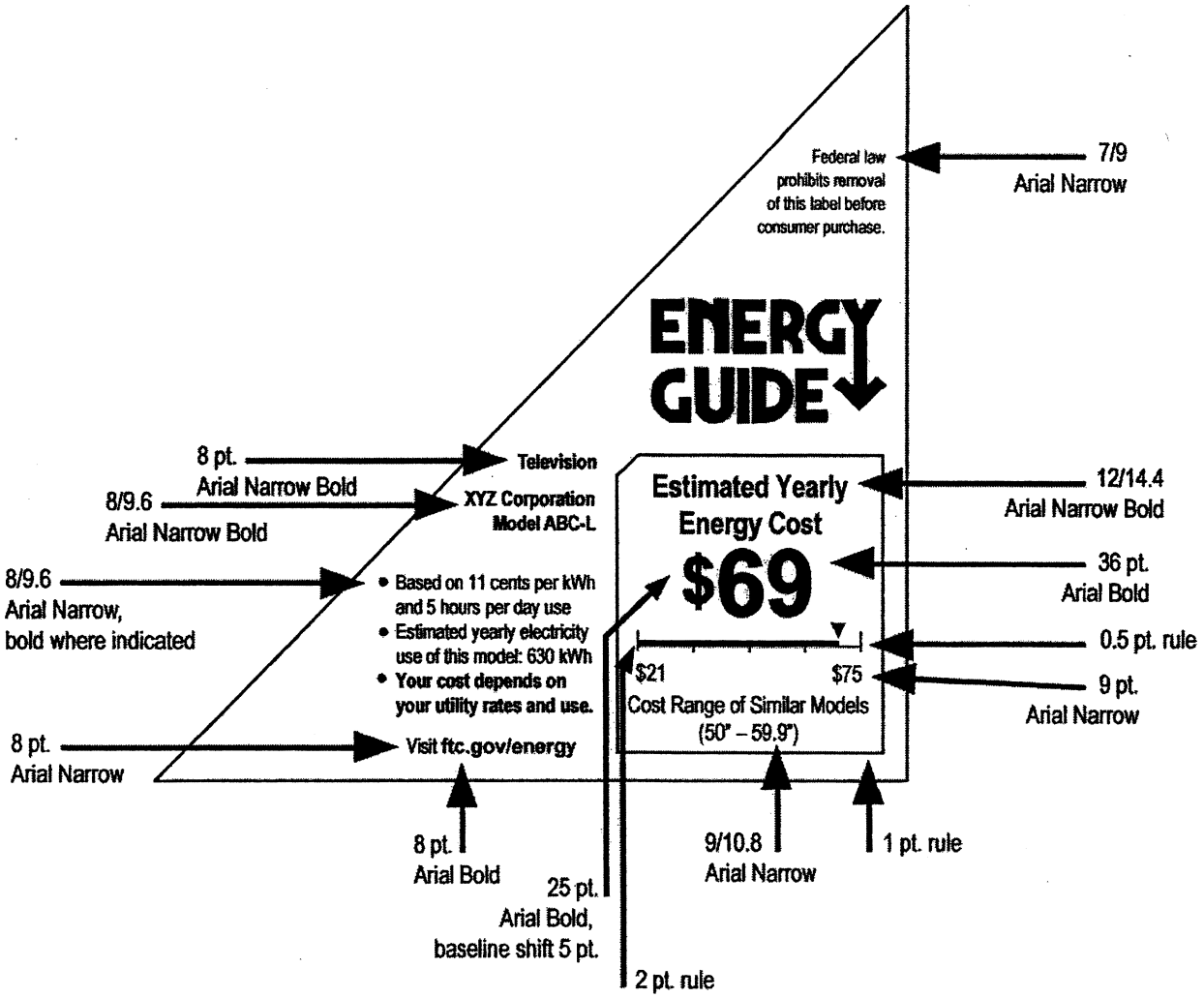
For more information, visit (*www.ftc.gov/appliances*)."

* * * * *

■ 8. Amend Appendix L by adding Prototype Labels 5, 6, and 7 and Sample Labels 10, 11, and 12:

Appendix L to Part 305 - Sample Labels

BILLING CODE 6750–S

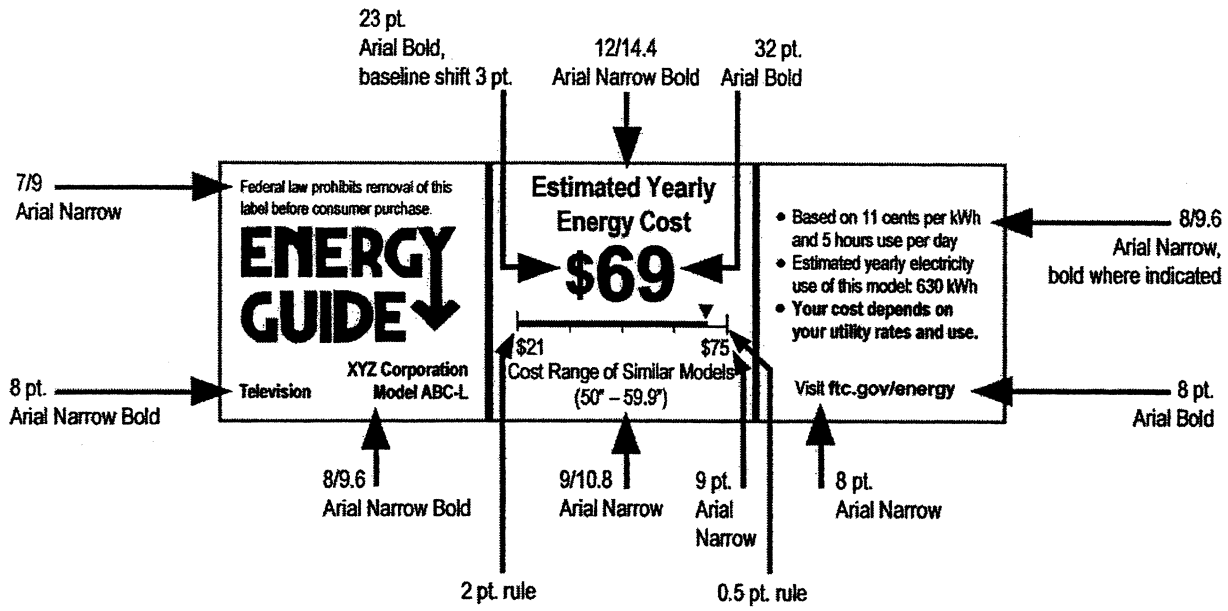


Minimum label size right angle triangle 4.2" x 4.2"

* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.375" wide.

Prototype Label 5

Triangular Television Label

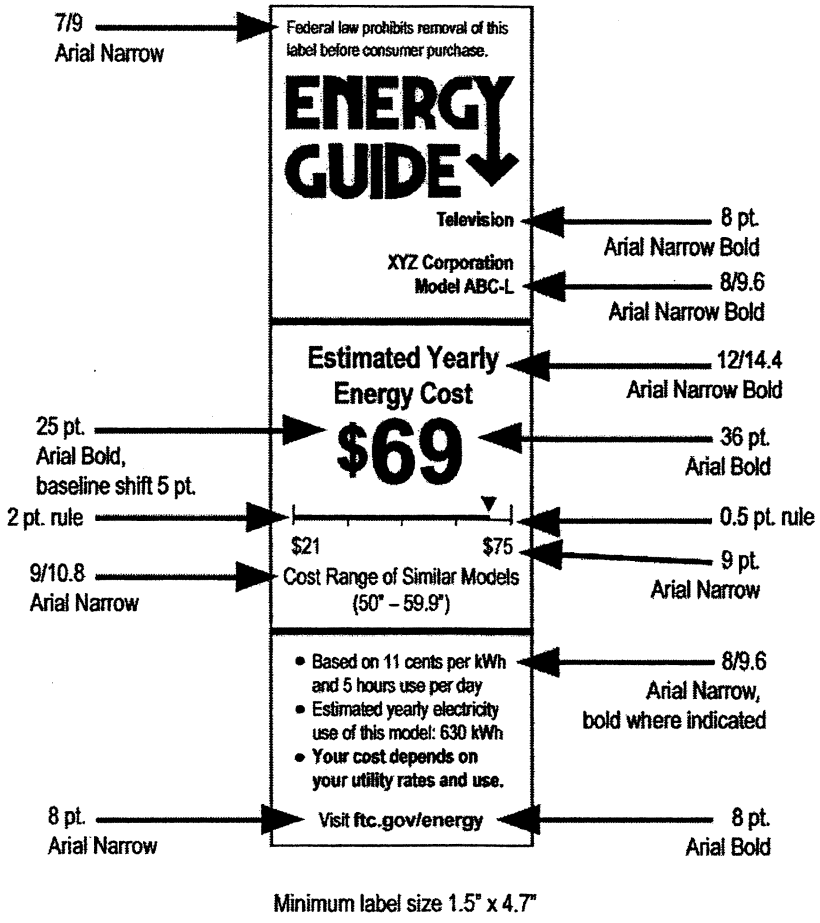


Minimum label size 1.5" x 4.7"

* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.375" wide.

Prototype Label 6

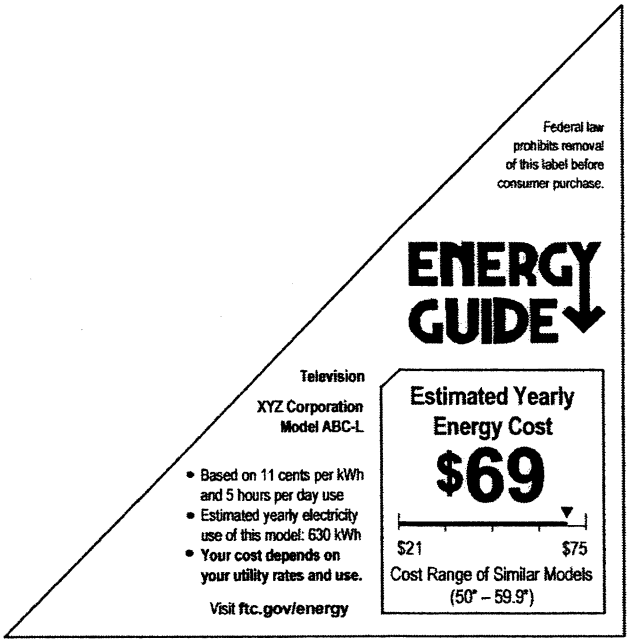
Horizontal Rectangular Television Label

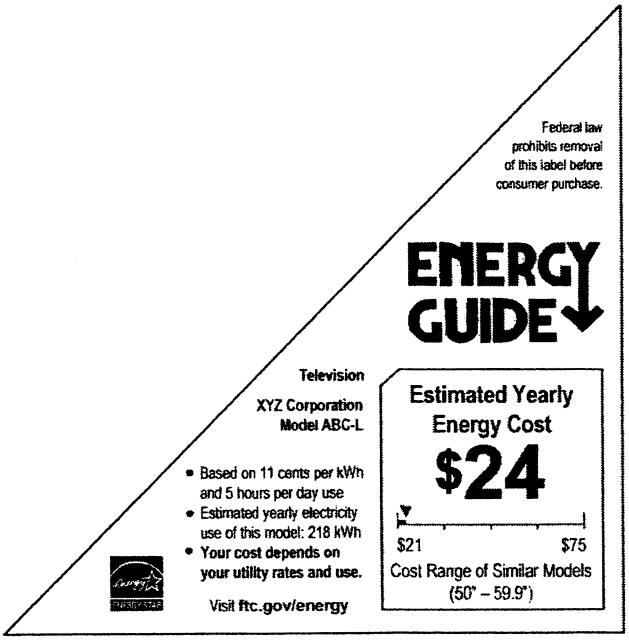


* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.375" wide.

Prototype Label 7

Vertical Rectangular Television Label



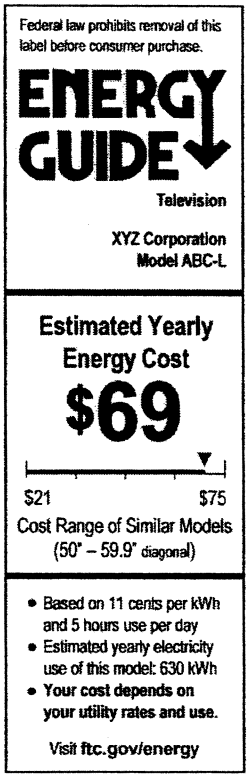


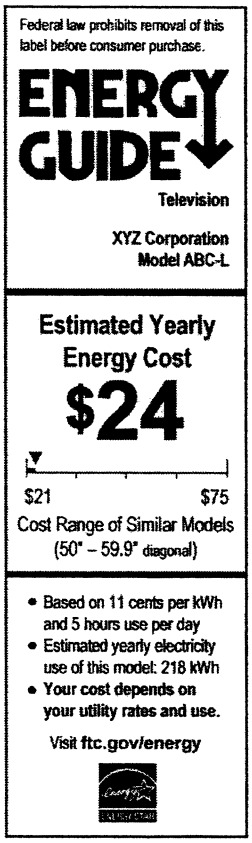
Sample Label 10

Triangular Television Label

Sample Label 10

Triangular Television Label



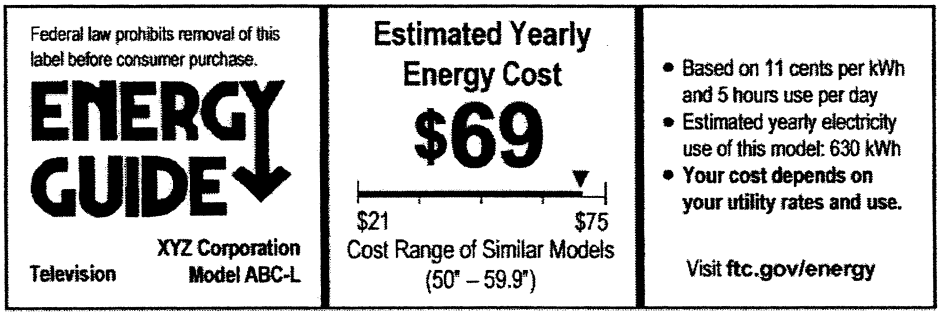


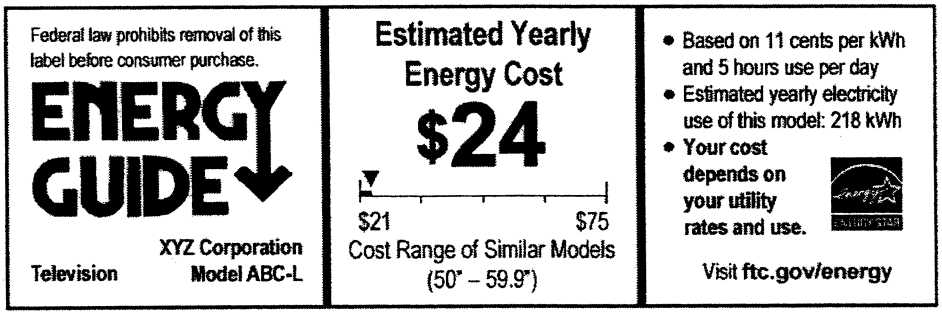
Sample Label 11

Vertical Television Label

Sample Label 11

Vertical Television Label





Sample Label 12

Horizontal Television Label

Sample Label 12

Horizontal Television Label

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–5152 Filed 3–10–10; 8:45 am]

BILLING CODE 6750–01–C

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Schedule of Water Charges; Correction

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of February 19, 2010, amending the schedule of water charges. This correction clarifies that the amended rates are proposed to take effect in two stages, on January 1, 2011 and January 1, 2012, respectively, and not on January 1, 2010 and January 1, 2011 as stated in the preamble.

FOR FURTHER INFORMATION, CONTACT: Pamela M. Bush, 609–477–7203.

Correction: In proposed rule FR Doc. 2010–3219, beginning on page 7411 in the issue of February 19, 2010, make the following correction in the **SUPPLEMENTARY INFORMATION** section. On page 7412 in the second column, in the second full paragraph, replace the text following the colon on the sixth line of the paragraph with the following:

"The consumptive use rate is proposed to be increased from $60 to $90 per million gallons effective on January 1, 2011 and from $90 to $120 per million gallons effective on January 1, 2012. The non-consumptive use rate is proposed to be increased from $.60 to $.90 per million gallons effective on January 1, 2011 and from $.90 to $1.20 per million gallons effective on January 1, 2012."

Dated: March 5, 2010.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2010–5219 Filed 3–10–10; 8:45 am]

BILLING CODE 6360–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0369; FRL–9125–4]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a site-specific revision to the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM_{10}) for Aggregate Industries Yard A Facility in Saint Paul, Ramsey County, Minnesota. On May 19, 2009, the Minnesota Pollution Control Agency requested that EPA approve certain portions of a joint Title I/Title V document into the Minnesota PM_{10} SIP for this facility. The State is also requesting in this submittal that EPA rescind the Administrative Order issued to J.L. Shiely Company which is currently included in Minnesota's SIP for PM_{10}. The emissions units previously owned by J.L. Shiely Company are now owned by Aggregate Industries. Because the PM_{10} emission limits are being reduced, the air quality of Ramsey County will be protected.

DATES: Comments must be received on or before April 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0369, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. E-mail: *damico.genevieve@epa.gov.*
3. *Fax:* (312) 385–5501.
4. *Mail:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: February 25, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–5120 Filed 3–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R06–OAR–2008–0192; FRL–9125–8]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Permit Renewal Application and Permit Renewal Submittal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the applicable State Implementation Plan (SIP) for the State of Texas which relate to the Permit Renewal Application and Permit Renewal Submittal regulations. These portions of the SIP revisions approved today would address requirements related to the timeline for the submittal of an application for permit renewal. EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being proposed under section 110 and parts C and D of the Act.

DATES: Comments must be received on or before April 12, 2010.

ADDRESSES: Comments may be mailed to Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Ms. Melanie Magee (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7161. Ms. Magee can also be reached via electronic mail at *magee.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, *see* the direct final rule which is located in the rules section of this **Federal Register.**

Dated: March 2, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–5239 Filed 3–10–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 47
Thursday, March 11, 2010

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

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Land and Resource Management Plan for the National Forests in Mississippi

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an environmental impact statement and the resumption of the land management plan revision.

SUMMARY: As directed by the National Forest Management Act, the USDA Forest Service is preparing the National Forests in Mississippi (NFsMS) revised land management plan (Forest Plan) and will also prepare an environmental impact statement (EIS) for this revised plan. This notice briefly describes the background history of NFsMS plan revision process to date, the nature of the decision to be made, the proposed action and need for change, and information concerning public participation. It also provides estimated dates for filing the EIS and the name and address of the responsible agency official and the individuals who can provide additional information. Finally, this notice briefly describes the applicable planning rule and how work done on the plan revision under the 2008 planning rule will be used or modified for completing this plan revision.

The revised Forest Plan will supersede the land and resource management plan previously approved by the Southern Region Regional Forester on September 16, 1985 and as amended seventeen times since original plan approval. This amended Forest Plan will remain in effect until the revised plan takes effect.

DATES: Comments concerning the need for change and the proposed action provided in this notice will be most useful in the development of the draft revised plan and draft environmental impact statement if received by May 7, 2010. The agency expects to release a draft revised Forest Plan and draft EIS for formal comment by October, 2010 and a final revised plan and final environmental impact statement by September, 2011.

ADDRESSES: Send written comments to: Forest Plan Revision, National Forests in Mississippi, 100 West Capitol St., Suite 1141, Jackson, MS 39269. Comments may also be sent via e-mail to *Mississippi_Plan@fs.fed.us* (include "Forest Plan Revision" in the subject line.

FOR FURTHER INFORMATION CONTACT: National Forests in Mississippi, Planning Team Leader, Jeff Long, 100 West Capitol Street, Suite 1141, Jackson, MS 39269 (phone 601–965–1600). Electronic mail should include "Forest Plan Revision" in the subject line and sent to: *Mississippi_Plan@fs.fed.us*. Information on this revision is also available at the National Forests in Mississippi Web site: *http://www.fs.fed.us/r8/mississippi/*.

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

A. Background

A Notice of Intent to begin the plan revision process for the NFsMS was first published in the **Federal Register** on December 14, 1999 [64 FR 69686–69691]. A collaborative, participatory role for the public has always been a part of the plan revision approach for the NFsMS. Although the process has had various delays and transitions, numerous meetings and working sessions along with extended informal feedback opportunities have provided a variety of ideas and input throughout the course of plan revision.

After initiating the plan revision process at the end of 1999, a series of public meetings were held in 2000 across the State of Mississippi to explain the plan revision process, get input on the issues important to stakeholders, and receive feedback on anticipated plan components. A total of 847 participants attended the 24 open house sessions that were conducted at various libraries, community centers, district offices, and local auditoriums near each of the Mississippi national forests. Over 6,000 individual comments were generated.

Changes in national priorities and funding shifts caused a delay of several years in the revision process. The NFsMS published a revised NOI in the **Federal Register** on September 26, 2003 (68 FR 55576–55580). The 2003 revised NOI provided public notice announcing resumption of plan revision activities, updated the projected schedule for plan revision and provided an opportunity for additional public comments on the scope of analysis for plan revision. An additional 12 public meetings were held from September through November 2004 at locations near each of the national forests and were attended by 237 individuals. Revision issues identified at the time included access management (off-highway vehicle issues); ecosystem management (ecological community diversity, fire management, forest health, invasive species, old-growth, riparian areas, vegetation management, watershed conditions); special designations (wilderness areas, wild and scenic rivers, research natural areas and other special area recommendations); and threatened, endangered, and sensitive species management (particularly red-cockaded woodpeckers and gopher tortoise).

In July 2005, the NFsMS Forest Plan revision process, which had begun under the 1982 Planning Rule, was transitioned to the 2005 Planning Rule. Notice of adjustment to an ongoing plan revision process was published in the **Federal Register** on July 27, 2005 (70 FR 43391–43392). At this point, the NFsMS had already conducted many public participation opportunities prior to transitioning to the 2005 rule, including over 35 public meetings and open houses; numerous agency contacts; and a variety of mailings, newsletters, Web site postings, and requests for comments. An important factor in the transition was ensuring that public feedback received in the earlier revision stages was included and considered under the new process. In addition to reviewing previous stakeholder input, another seven public meetings or workshops were held across the State from late 2005 to early 2006 and attended by approximately 210 participants. That round of working sessions exchanged information on the changes in the new planning process

and focused on the public's vision for the future of the NFsMS. On August 29, 2005 Hurricane Katrina made land fall on the Gulf Coast causing extreme broad-scale damage along the Mississippi Gulf Coast. While plan revision efforts continued most national forest resources and personnel were devoted to recovery efforts, protracting the NFsMS plan revision timeline.

On March 30, 2007, the Federal District Court for the Northern District of California enjoined the Department from implementing and using the 2005 planning rule until the Agency complied with the court's order regarding the National Environmental Policy Act, the Endangered Species Act, and the Administrative Procedure Act (*Citizens for Better Forestry* v. *USDA*, 481 F. Supp 2d 1059 (N.D. Cal. 2007)). Revision of the National Forests in Mississippi land management plan under the (36 CFR 219 (2005)) rule was suspended in response to the injunction.

Prior to the injunction of the 2005 planning rule, the National Forests in Mississippi had substantially engaged the public in collaboration efforts to develop plan components, completed a draft Comprehensive Evaluation Report, worked with the scientific community on addressing concerns for species viability and sustainability to be addressed in the revised plan, had developed a model for timber suitability and sustainability analysis, and had completed initial drafts of major plan components.

On April 21, 2008 the Forest Service adopted a new planning rule that allowed resumption of the revision process if it conformed to the new planning rule (36 CFR 219.14(b)(3)(ii), 2008). Notification of adjustment for resuming the land management plan revision process under the 36 CFR 219 (2008) rule for the NFsMS was published in the **Federal Register** on October 24, 2008 [73 FR 63433–63434]. The NFsMS in Mississippi developed a draft revised Forest Plan consistent with the 2008 rule, however prior to public release for review and comment the 2008 planning rule was enjoined by Federal Court order. On June 30, 2009, the 2008 planning rule was enjoined by the United States District Court for the Northern District of California and the revision of the NFsMS Forest Plan was again suspended.

B. Applicable Planning Rule

Preparation of the NFsMS revised plan was underway when the 2008 National Forest System land management planning rule was enjoined on June 30, 2009, by the United States District Court for the Northern District of California (*Citizens for Better Forestry* v. *United States Department of Agriculture*, No. C 08–1927 CW (N.D. Cal. June 30, 2009). The Department has determined that the 2000 planning rule is now back in effect. The 2000 Rule's transition provisions (36 CFR 219.35), amended in 2002 and 2003 and clarified by interpretative rules issued in 2001 and 2004, and reissued on December 18, 2009 (74 FR 67059–67075) allow use of the provisions of the National Forest System land and resource management planning rule in effect prior to the effective date of the 2000 Rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise plans. The NFsMS has elected to use the provisions of the 1982 planning rule, including the requirement to prepare an EIS, to complete its plan revision.

C. Name and Address of the Responsible Official

The responsible official who will approve the Record of Decision is Elizabeth Agpaoa, Regional Forester, USDA Forest Service, Southern Region, 1720 Peachtree Road NW., Atlanta, GA 30309.

D. Nature of the Decision To Be Made

The NFsMS is preparing an EIS to revise the current Forest Plan. The EIS process is meant to inform the Regional Forester so that she can decide which alternative best meets the diverse needs of the people while protecting the forest's resources, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act. The Revised Forest Plan will establish management direction for the next 10 to 15 years.

A Forest Plan developed under the 1982 planning rule procedures will make the following primary decisions:

1. Establishment of forest-wide multiple-use goals and objectives (36 CFR 219.11(b));

2. Establishment of forest-wide management requirements (36 CFR 219.13 to 219.27);

3. Establishment of multiple-use prescriptions and associated standards for each management area (36 CFR 219.11(c));

4. Determination of land that is suitable for the production of timber (16 U.S.C. 1604(k) and 36 CFR 219.14);

5. Establishment of the allowable sale quantity for timber within a time frame specified in the plan (36 CFR 219.16);

6. Establishment of monitoring and evaluation requirements (36 CFR 219.11(d));

7. Recommendations concerning roadless areas that Congress could designate as wilderness (36 CFR 219.17); and

It is also important to identify the types of decisions that will not be made within the revised forest plan. Forest Plans typically do not make site-specific decisions but they do establish limitations on what actions may be authorized and what conditions must be met as part of project-level decision-making. The authorization of site-specific activities within a plan area later occurs through project decision-making that must comply with NEPA procedures and must include a determination that the project is consistent with the Forest Plan.

E. Prior Plan Revision Efforts

Although the 2008 planning rule is no longer in effect, the information gathered from public collaboration efforts and most of the analysis conducted prior to the court's injunction in June 2009 is still useful for completing the plan revision using the provisions of the 1982 planning regulations. The NFsMS has concluded that the following material developed during the plan revision process to date is appropriate for continued use:

- The inventory of potential wilderness areas that was conducted between 2004 and 2008 is still consistent with the 1982 planning regulations, and will be brought forward into this plan revision process.
- A Comprehensive Evaluation Report was developed under the 2005 and 2008 rule provisions. This analysis has been updated with additional information to meet the requirements of the Analysis of the Management Situation (AMS) provisions of the 1982 rule. The information from this analysis was used to help identify the need for change and the proposed actions that are identified in this notice. Comments received during the scoping process will be used to further update the need for change analysis. Other AMS requirements will also continue to be worked on as the planning process proceeds.
- Information on the life history, threats, habitat needs and population trends of a number of terrestrial and aquatic species contained in the forest planning records for ecosystem and species diversity assessments will continue to be used as a reference in the planning process as appropriate to meet the requirements of the 1982 planning regulations. This is scientific information and is not affected by the change of the planning rule. This

information will be updated with any new available information.

• Public comments previously submitted in writing or recorded at past public meetings relating to the previous plan revision efforts will still be used to help identify issues and concerns and to help identify alternatives to address these issues and concerns.

F. Preliminary Issues and Need for Change

According to the National Forest Management Act, forest plans are to be revised on a 10 to 15 year cycle. The current forest plan is over 24 years old, and since the forest plan was approved in 1985, there have been changes in economic, social, and ecological conditions, new policies and priorities, and new information based on monitoring and scientific research.

The following issues identify some of the major evolving conditions and shifts in management direction, scientific understanding, and public interests since the 1985 Forest Plan:

• New emphasis on restoring and sustaining a diversity of native ecosystems (particularly restoration of native longleaf pines) instead of focusing on timber commodities production in the 1985 Plan.

• Shift from vegetation management as a means of more efficient timber harvest and production to a tool for carrying out restoration goals while sustaining healthy resilient forests that also supply desired goods and services.

• More emphasis on protecting and promoting habitat for threatened and endangered (T&E) species (especially red-cockaded woodpecker and gopher tortoise).

• Better understanding of the historic role of fire and the need for an aggressive prescribed fire program to maintain fire-dependent native ecosystems, reverse habitat loss for endangered species, reduce fuel hazards, control non-native invasive species, and protect human safety.

• Increasing population and development adjacent to national forest lands are putting growing pressures on conducting effective management practices.

• Growing demand for recreation opportunities, particularly developed recreation sites.

• Need for a more sustainable system of access roads, trails, and bridges.

• Need for addressing the effects of increasing weather disturbances and incorporating strategies for responding to anticipated climate changes in our management practices.

G. Proposed Action

The NFsMS will complete plan revision following the 1982 planning rule procedures. The NFsMS will utilize past plan revision activities and make appropriate adjustments to planning documents and analysis processes to conform to the 1982 planning procedures. Public collaboration on development of this EIS and continued development of a revised Forest Plan will build upon information gathered previously where the NFsMS was in the revision process just prior to the Court injunction issued on the 2008 planning rule on June 30, 2009. The NFsMS had completed development of a draft revised Forest Plan, however the draft plan was not released for public comment prior to the injunction of the 2008 planning rule. Therefore, the NFsMS will not circulate the draft plan prepared under the 2008 procedures for public review and comment; however, appropriate portions will become a starting point for public collaboration on the development of the revised plan under the 1982 procedures.

Several overarching themes have emerged over time in the various efforts to revise the forest plan, which now provide a framework for developing the Proposed Action alternative for this EIS. These themes include:

1. *Restore native ecological systems*—Restoration of native ecological systems has emerged as a major desired condition for stakeholders. Twenty-four native ecological systems have been identified on the NFsMS, including 9 unique communities or uncommon local features. Priorities for achieving desired conditions include conversion of loblolly and slash pine stands to longleaf pine and shortleaf pine-oak ecosystems, restoration of floodplain forests, and continued maintenance and enhancement of native hardwood ecosystems and unique communities such as native prairies and bogs. Proposed strategies and objectives include the conversion of approximately 23,000 acres to appropriate ecosystems and structural, age, and species improvements on approximately 150,000 acres during the first planning period.

2. *Protect diversity of species*—One of the basic tenants of revising the plan is that managing for a diversity of healthy native ecosystems is integral to providing appropriate ecological conditions for a diversity of plant and animal species. In gathering information for revising the plan, a list of all potential species that could occur on the NFsMS has been developed and analyzed through a series of collaborative meetings with technical experts and taxonomic specialists familiar with the plant and animal species across Mississippi. Species that could possibly occur on the NFsMS were further evaluated through a series of iterative screenings. As the strategic direction of the revised plan is being developed, the specific needs and habitats of species on the lists will be addressed, primarily through ecosystem diversity management strategies, but also though integrated programs for soils, water, fire regimes, and other resource areas. T&E species protection and habitat enhancement are important priorities in revising the plan, so the needs of the 9 T&E species identified as potentially occurring on the NFsMS will particularly be emphasized. This process will continue throughout plan revision development, including the identification of Management Indicator Species.

3. *Manage for healthy forests*—A shift in focus from commodity production to native ecosystem restoration and forest health is being proposed. Vegetation management practices support a variety of integrated resource strategies including converting loblolly and slash pine plantings to native ecosystems, creating a diversity of habitats, improving resilience to natural disturbances and a changing climate, reducing impacts of insects and diseases, controlling non-native invasive species, and producing quality timber commodities.

4. *Conserve old growth communities*—A diversity of tree ages, from regeneration to old growth, is proposed to support a sustainable mix of ecological conditions across the landscape. The overall proposed strategy is to establish old growth stands across all ecological systems and all districts, with at least 10% of all forested ecosystems in old growth conditions.

5. *Restore historic fire conditions*—On the NFsMS, periodic prescribed burning has become an important tool for recreating historic fire regimes and reducing the risk of catastrophic fires while restoring conditions that favor desirable native ecosystems and habitats for T&E species. A proposed strategy is to continue the prescribed burning levels of recent years, with an average of 205,000 acres per year. The frequency of return intervals for prescribed burns and the percent of burns conducted during the growing season would vary depending on the ecosystem and habitat needs.

6. *Manage for healthy watersheds*—Productive soils, clean water, and clean air were important desired conditions

identified by stakeholders and are essential to sustaining the ecological function and productive capacity of NFsMS lands. Proposed management strategies focus on using best management practices for sustaining and improving watershed areas within national forest control while working cooperatively with other agencies and landowners to improve statewide watershed health. Proposed objectives include the restoration of approximately 10 miles of stream channel every 5 years in conjunction with culvert replacement to improve aquatic organism passage, and the improvement of approximately 10–15 acres of degraded watershed areas each year.

7. *Maintain sustainable infrastructure and access*—It is proposed that the main priorities for managing the roads, trails, and facilities that make up the NFsMS infrastructure would involve the safety and maintenance of existing systems. This would include addressing the backlog of repairs and upgrades, improvements for environmental protection, disposal of facilities that are no longer needed, and rehabilitation of user-created trails and roads. Infrastructure additions are anticipated to be limited and dependent on funding availability.

8. *Maintain sustainable recreation*—Proposed strategies for sustaining outdoor recreation opportunities on the NFsMS under anticipated funding levels focus on maintaining and improving existing dispersed recreation opportunities and developed recreation sites, with the addition of new facilities and amenities dependent on expanding local and State-wide partnerships.

9. *Provide stable economic benefits*—The national forest activities that generate the majority of the revenues that feed back into the local economy in Mississippi come from timber, minerals, and recreation. As a result of the proposal to restore native ecosystems to appropriate sites and maintaining healthy and resilient forests, it is anticipated that there would be a steady flow of economic benefits similar to those received in recent years.

10. *Adapt to changing conditions*—An increase in extreme weather events is the climate change factor most likely to affect the NFsMS in the next 10–15 years. Proposed strategies include reducing vulnerability by maintaining and restoring resilient native ecosystems, enhancing adaptation by reducing serious disturbances and taking advantage of disruptions, using preventative measures to reduce opportunities for forest pests, and mitigating greenhouse emissions by reducing carbon loss from hurricanes.

H. Preliminary Alternatives

Information gathered during this comment period, as well as other feedback, will be used to identify issues that will serve as a focus for developing alternatives to be analyzed in the draft EIS.

I. Public Involvement

The public is invited to provide comments on this NOI, especially regarding the scope of analysis for the items identified under Need for Change and Proposed Action sections above. Additional information is available on the National Forests in Mississippi Web site: *http://www.fs.fed.us/r8/mississippi/.*

Notice of public meeting times and places will be posted on the above Web site and will also be published in the newspaper of record (legal notice section) for National Forests in Mississippi (Clarion-Ledger—Jackson, Mississippi).

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the revised plan and the EIS. Therefore, comments on the proposed action and need for change will be most valuable if received by May 7, 2010 and should clearly articulate the reviewers' concerns. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative or judicial review. At this time, we anticipate using a pre-decisional objection process for administrative review.

Comments received in response to this solicitation, including the names and addresses of those who comment will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 [74 FR 67073–67074].

Dated: March 2, 2010._

Margrett L. Boley,

Forest Supervisor.

[FR Doc. 2010–4932 Filed 3–10–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Land Management Plan for the Uwharrie National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent To Revise the Land and Resource Management Plan and Prepare an Environmental Impact Statement.

SUMMARY: As directed by the National Forest Management Act, the USDA Forest Service is preparing the Uwharrie National Forest's revised land management plan (forest plan) and will also prepare an Environmental Impact Statement (EIS) for this revised forest plan. This notice briefly describes the nature of the decision to be made, the need for change and proposed action, and information concerning public participation. It also provides estimated dates for filing the ElS and the name and address of the responsible agency official and the individuals who can provide additional information. Finally, this notice briefly describes the applicable planning rule and how plan revision work completed under the 2008 planning rule will be used or modified for completing this plan revision. The revised forest plan will supersede the current forest plan that was approved by the Regional Forester in May 1986. The current forest plan will remain in effect until the revised forest plan takes effect.

DATES: Comments concerning the need for change and proposed action provided in this notice will be most useful in the development of the draft revised forest plan and EIS if received by May 7, 2010. The agency expects to release a draft revised forest plan and draft EIS for formal comment by October, 2010 and a final revised forest plan and final EIS by September, 2011.

ADDRESSES: Comments may be sent via e-mail: *comments-southern-north carolina@/fs.fed.us,* or via facsimile to 828–257–4263. Send or deliver written comments to: National Forests in North Carolina, *Attention:* Uwharrie Plan Revision Team, 160A Zillicoa Street, Asheville, NC 28801.

FOR FURTHER INFORMATION CONTACT: Ruth Berner, Forest Planner, National Forests in North Carolina, 160A Zillicoa Street, Asheville, NC, (828) 257–4862. Information regarding this revision is also available at the National Forests in North Carolina Web site: *http://www.cs.unca.edu/nfsnc/uwliarrie_plan/index.htm.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Name and Address of the Responsible Official

The responsible official who will approve the Record of Decision is Elizabeth Agpaoa, Regional Forester, 1720 Peachtree Road NW., Atlanta, Georgia, 30309.

B. Nature of the Decision To Be Made

The Uwharrie National Forest is preparing an EIS to revise the current forest plan. The EIS process is meant to inform the Regional Forester so that she can decide which alternative best meets the diverse needs of people while protecting the forest's resources, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act. The revised forest plan will describe the strategic intent of managing the Uwharrie National Forest into the next 10 to 15 years and will address the need for change described below. The revised forest plan will provide management direction in the form of goals (desired conditions), objectives, suitability determinations, standards, guidelines, and a monitoring plan. It may also make new special interest area designations and recommendations.

It is also important to identify the types of decisions that will not be made within the revised forest plan. The authorization of project-level activities on the forests is not a decision made in the forest plan but occurs through subsequent project specific decision making. The designation routes and trails for motorized vehicle travel, equestrian and mountain bike use are not considered during plan revision, but will be addressed through subsequent planning processes. Some issues (*e.g.,* hunting regulations), although important, are beyond the authority or control of the Uwharrie National Forest and will not be considered.

C. Need for Change and Proposed Action

According to the National Forest Management Act, forest plans are to be revised on a 10 to 15 year cycle. The purpose and need for revising the current forest plan are (1) the forest plan is over 20 years old, and (2) since the forest plan was approved in 1986, there have been changes in economic, social, and ecological conditions, new policies and priorities, and new information based on monitoring and scientific research. Extensive public and employee collaboration, along with science-based evaluations, identified the need for change in the current forest plan. This need for change has been organized into three revision themes that focus on the sustainability of ecological, social, and economic systems: (1) Restoring the forest to a more natural ecological condition, (2) better managing heritage resources, and (3) providing outstanding and environmentally friendly outdoor recreation opportunities, with excellent trails and facilities. The need for change is described fully in the Draft Analysis of the Management Situation document, which is available on the forests' Web site: *http://www.cs.unca.edu/nfsnc/uwharrie_plan/index.htm*.

The Proposed Action is to revise the current forest plan to address the following three revision themes:

Revision Theme 1—Restoring Tile Forest to a More Natural Ecological Condition

Restoring Native Ecosystems

Existing Forest ecosystems include native pine and hardwood communities, but also include loblolly pine communities on sites that once supported longleaf pine and oak hickory forests. The 1986 Plan emphasized timber production and one result was additional loblolly planting. By refocusing the emphasis onto restoration of native ecosystems, the proposed action includes re-introduction of longleaf pine and oak hickory forests on appropriate sites.

Woodlands and open, prairie like conditions also existed in the Uwharrie area in the past and supported a variety of sun-loving species that are now rare in the current more closed-canopy conditions. The Endangered Schweinitz's sunflower is one such species. The proposed action includes creating more open woodland conditions to support these rare species, thus better contributing to native biological diversity.

Using Fire as a Tool

Restoring natural fire regimes is important in sustaining some native ecosystems such as longleaf pine and the open woodland conditions utilized by other rare plants. The proposed action increases the use of prescribed fire for better maintenance of these native plant communities.

Controlling Non-Native Invasive Plants

The 1986 Plan did not emphasize controlling non-native invasive plant species. The proposed action sets objectives for addressing this issue.

Consistent Acorn Production

There is a relatively limited supply of oaks in the age range when acorns are most abundantly produced. The proposed action includes periodic vegetation management to maintain a more consistent amount of oaks with prime acorn production capabilities.

Selective Stream Restoration

Opportunities exist to improve stream channel stability and aquatic habitat. The proposed action emphasizes proactive restoration of streams and aquatic habitats.

Revision Theme 2—Better Managing Heritage Resources

Studying History

There are more than 1,600 recorded heritage resources on the Uwharrie. These resources include artifacts and archeological sites that document human use of the area for more than 14,000 years. The Forest was home for people who extracted its resources and the Forest holds abundant evidence of their activities and habitations. Their effects on the landscape and the environment's effects on the people can only be understood with further study of these resources.

Protecting History

Unauthorized disturbance and collection of artifacts is prohibited under the Archeological Resources Protection Act of 1979, which protects all artifacts and sites over 100 years of age located on Federal lands. The proposed action includes direction to mitigate impacts to high priority sites.

Interpreting History

Opportunities abound for historic interpretation (Thomburg property, Crump Farm, Arrowhead Trail, goldmines) and for scientific research (prehistoric quarries and bogs/upland swamps). Bogs and upland swamps are likely to contain well-preserved data to interpret past environments. The proposed action includes direction to create additional opportunities for heritage resource interpretation.

Revision Theme 3—Providing Outstanding and Environmentally Friendly Outdoor Recreation Opportunities, With Excellent Trails and Facilities

Growth as a Tourist Destination

The Uwharrie is the top tourist destination in Montgomery County, and one of several popular tourist destinations in Randolph County. There may be tourism related opportunities to provide more economic benefits to local communities. The proposed action includes direction to provide well-maintained tourism-related infrastructure that would continue to attract visitors.

Nature Hikes and Day Use More Popular

Many visitors to the Uwharrie seek a place to walk, view nature, and perhaps picnic, swim, or fish. The Forest, with its lake and river frontage, rolling topography, and facilities, is currently

providing a variety of these desired opportunities. These opportunities can help support the health and well-being of the populations of forest visitors. The proposed action emphasizes the Uwharrie National Recreation Trail, Badin Lake Recreation Area, the many trail systems, and the Uwharrie River.

Forest Roads and Trails in Need of Improvement

There may be opportunities to improve the existing Forest road and trail system, to enhance public access while minimizing visitor conflicts and resource damage. The proposed action focuses considerable attention on the trail systems, and includes a desire for moving equestrian and mountain bike use to a designated trail system. OHVs are already limited to a designated system.

Providing Visitor Information

The proposed action places more emphasis on visitor information that could increase visitor enjoyment and be a useful tool in controlling visitor impacts.

D. Public Involvement on the Proposed Action

Extensive public involvement and collaboration on revising the Uwharrie's Forest Plan has already occurred. Discussions with the public regarding needed changes to the current forest plan began with a series of public meetings in 2005 and 2006. This input, along with science-based evaluations, was used to determine a need for change and a proposed plan. Correspondence, news releases, comment periods, and other tools were used to gather feedback from the public, forest employees, tribal governments, federal and state agencies, and local governments. A Proposed Land Management Plan for the Uwharrie National Forest was issued for a 90-day public comment period beginning February 15, 2007. Before the end of that comment period, the 2005 Forest Service planning rule was enjoined by federal court. Preparation of the revised plan was halted at that time. A new planning rule was implemented on April 21, 2008 allowing the planning process to be resumed. A second Proposed Land Management Plan for the Uwharrie National Forest was then issued for a 90-day comment period on February 23, 2009, following the direction of the 2008 Planning Rule. The 2008 planning rule was also enjoined by a federal court. The planning process for revising the Uwharrie's Forest Plan is now moving forward using the requirements of the 1982 planning rule (see the discussion below for more information on the sequence of events and the determination that the Uwharrie National Forest can continue the planning process using the provisions of the 1982 planning rule). The Forest Service is now soliciting comments on a new proposal to revise the Uwharrie National Forest Land and Resource Management Plan. This proposal reflects the work that has previously been accomplished and adjusted to meet the requirements of the 1982 rule. A copy of the proposal can be found on the Web site described at the end of this notice.

E. Issues and Preliminary Alternatives

Information gathered during this comment period, as well as other feedback, will be used to prepare the draft EIS. At this time, the Uwharrie National Forest is seeking input on the proposed action. From these comments the Forest Service will identify issues that will serve as a focus for developing alternatives to be analyzed in the EIS.

F. Scoping Process

Comments on the need for change, issues, proposed action, and preliminary alternatives will be most valuable if received by May 7, 2010 and should clearly articulate the reviewer's concerns. Comments received in response to this solicitation, including the names and addresses of those who comment, will be part of the public record. The submission of timely and specific comments can affect a reviewer's ability to participate in any subsequent administrative or judicial review. At this time, we anticipate using a pre-decisional objection process for administrative review. Comments submitted anonymously will be accepted and considered.

G. Applicable Planning Rule

Preparation of the revised forest plan for the Uwharrie National Forest originally began with the publication of a Notice of Initiation in the **Federal Register** on November 18, 2005 [70 FR 69931] and was initiated under the planning procedures contained in the 2005 Forest Service planning rule (36 CFR 219 (2005)). On March 30, 2007, the United States District Court for the Northern District of California enjoined the Forest Service from implementing the 2005 planning rule and the revision of the Uwharrie's Forest Plan under the 2005 rule was suspended in response to that injunction. On April 21, 2008, the Forest Service adopted a new planning rule that allowed resumption of the revision process if it conformed to the new planning rule (36 CFR 219.14(b)(3)(ii) (2008)). On February 25, 2009, a Notice of Adjustment for Resuming the land management revision process and Notice of Commencement of a 90-day comment period for the Uwharrie National Forest Proposed Land Management Plan was published in the **Federal Register** [74 FR 8500]. Then on June 30, 2009, the 2008 planning rule was enjoined by the United States District Court for the Northern District of California (Citizens for *Better Forestry* v. *United States Department of Agriculture,* No. C 08–1927 CW (N.D. Cal. June 30, 2009)) and the revision of the Uwharrie's Forest Plan was again suspended. The Department of Agriculture has determined that the 2000 planning rule is now back in effect. The 2000 planning rule's transition provisions (36 CFR 219.35), amended in 2002 and 2003, clarified by interpretative rules issued in 2001 and 2004, and reissued on December 18, 2009 [74 FR 67059–67075], allow use of the provisions of the planning rule in effect prior to the effective date of the 2000 Rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise forest plans. The Uwharrie National Forest has elected to use the provisions of the 1982 planning rule, including the requirement to prepare an ElS, to complete its forest plan revision.

H. Other Prior Plan Revision Efforts

Although the 2008 planning rule is no longer in effect, the information gathered from public collaboration efforts and most of the analysis conducted prior to the court's injunction in June 2009 is still useful for completing the plan revision using the provisions of the 1982 planning regulations.

○ Under the 2005 and 2008 planning rules, a Comprehensive Evaluation Report (CER) was completed that formed the basis for the need to change and the proposed plan that was available for public comment in 2007 and 2009. This analysis has been updated with additional information to meet the requirements of the Analysis of Management Situation (AMS) provisions of the 1982 planning rule. The information from this Draft Analysis of the Management Situation report was then used to update the proposed action. As the planning process continues, comments received during the scoping process, plus any new information or areas identified as needing to be changed, will be used to supplement the AMS documents. Other AMS requirements will also continue to be worked on as the planning process proceeds.

○ Information on the life history, threats, habitat needs and population trends of a number of terrestrial and aquatic species contained in the forest planning records for ecosystem and species diversity assessments will continue to be used as a reference in the planning process as appropriate to meet the requirements of the 1982 planning rule. This is scientific information and is not affected by the change of the planning rule. This information will be updated with any new available information.

○ Public comments previously submitted in writing, or recorded at past public meetings, related to the revision of the Uwharrie's Forest Plan since 2005 will be used to help identify issues and concerns and to help develop alternatives to address these issues and concerns.

I. Documents Available for Review

The proposed action, background reports, assessments, datasets, and public comments are posted on the Forest's Web site at: *http://www.cs.unca.edu/nfsnc/uwharrie_plan/index.htm.* As necessary or appropriate, this material will be further adjusted as part of the planning process using the provisions of the 1982 planning rule.

(Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 [74 FR 67073–67074]).

Dated March 3, 2010.

Marisue Hilliard,

Forest Supervisor.

[FR Doc. 2010–5101 Filed 3–10–10; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue River-Siskiyou National Forest; Mt. Ashland Ski Area Expansion, Jackson County, OR

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement to analyze and correct NFMA and NEPA violations found by the United States Court of Appeals for the Ninth Circuit in CV–05–03004–PA, to conditionally authorize expansion of the Mt. Ashland Ski Area.

SUMMARY: In September 2004, the Forest Service issued a Record of Decision (ROD) for the Mt. Ashland Ski Area (MASA) expansion, selecting Alternative 2 with some modifications adopted from Alternative 6. The Forest Service received twenty-eight notices of appeal to the ROD. In December 2004, the Forest Service denied all administrative appeals to the ROD. In January 2005, Oregon Natural Resources Council (ONRC) filed suit against the Forest Service and Regional Forester Linda Goodman seeking declaratory and injunctive relief on the grounds that the MASA expansion project violated both the NEPA and the NFMA. On February 9, 2007, after considering cross motions for summary judgment, a United States District Court entered summary judgment against ONRC. ONRC filed a timely notice of appeal to the Ninth Circuit Court of Appeals. Upon review, the Court of Appeals remanded the case to the district court and instructed it to promptly enjoin the MASA expansion project contemplated in the 2004 ROD until the Forest Service corrected the NFMA and NEPA violations found in Opinion CV–05–03004–PA.

DATES: Under 40 CFR 1502.9(c)(4), there is no formal scoping period for this action. The Draft Supplemental Environmental Impact Statement (SEIS) is expected March 2010 and the Final Supplemental Environmental Impact Statement is expected May 2010.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Siskiyou Mountains Ranger District, Rogue River-Siskiyou National Forest, 645 Washington Street, Ashland, Oregon, 97520, Telephone (541) 552–2900; FAX (541) 552–2922.

SUPPLEMENTARY INFORMATION: The Court of Appeals identified several NFMA and NEPA claims, including failure to conduct a proper Biological Evaluation for the Pacific fisher that addresses the five steps referenced in the Land and Resource Management Plan (LRMP). The Court of Appeals found it necessary to understand the type of habitat the Pacific fisher requires for food, shelter and reproduction. A link between mapping of habitat and habitat needs must be made in order to use habitat as a proxy for population census. Potential impacts of displacing fisher and damaging habitat in the corridor between the Siskiyous and Southern cascades must be understood. Cumulative effects of foreseeable future projects on fisher habitat must be understood. The Court of Appeals also found failure to appropriately designate Riparian Reserve and Restricted Watershed land allocations and to properly analyze against LRMP standards and guidelines for soils. Landslide Hazard Zone 2 should have been designated as Riparian Reserve.

Purpose and Need for Action

The purpose and need for this supplemental document is to analyze and correct specific violations identified by the Ninth Circuit Court of Appeals which will allow a determination on whether and to what extent analysis of supplemental information might alter the decision to allow ski area expansion. This action is needed to address the appropriateness of the previous decision and to be responsive to the Court of Appeals Opinion and district court injunction.

Responsible Official

The Rogue River-Siskiyou and Klamath National Forests are jointly responsible for public land management of the Special Use Permit area. The Rogue River-Siskiyou National Forest has been authorized to make decisions regarding implementation of ski area expansion activities at Mt. Ashland under the terms of a February 4, 2004 Intra Agency Agreement (No. 03–IA–11061002–005), between the Klamath National Forest and the Rogue River-Siskiyou National Forest and renewed on May 12, 2009 Intra Agency Agreement (09–IA–11061001–003).

Decision Framework

The Forest Service will use the results of supplemental analysis to determine if and how the violations identified by the Ninth Circuit will affect the 2004 decision. The Forest Service will decide whether to withdraw the 2004 decision, or issue a new or supplemental decision. If a new or supplemental decision is issued following preparation of the Final Supplemental Environmental Impact Statement, that decision will be subject to appeal in accordance with 36 CFR 215.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft SEIS will be prepared for comment. Comments received on the Draft SEIS will be considered in the preparation of the Final SEIS. The Draft SEIS is now expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 2010. The comment period on the Draft SEIS will be 45-days from the date EPA publishes the Notice of Availability in the **Federal Register**. At the end of the comment period on the Draft SETS, comments will be analyzed and considered by the Forest Service in preparing the Final SEIS. The Final SETS is scheduled to be completed by May 2010. The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewers position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. C*ity of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final SETS. To assist the Forest Service in identifying and considering issues and concerns, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and address of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 508.22; 36 CFR 220.5.

Dated: March 1, 2010.

Scott D. Conroy,

Forest Supervisor.

[FR Doc. 2010–5021 Filed 3–10–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products.

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture (USDA) will be holding a public meeting of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products (Consultative Group) on March 29, 2010. The sole purpose of the meeting is to solicit input from the public regarding the Consultative Group's statutory mandate to develop recommendations relating to a standard set of practices for independent, third-party monitoring and verification for the production, processing, and distribution of agricultural products or commodities to reduce the likelihood that agricultural products or commodities imported into the United States are produced with the use of forced labor or child labor. The notice sets forth the process for requesting to appear at the meeting, and for submitting written statements. On June 18, 2008, the President signed into law the Food, Conservation, and Energy Act of 2008 (the Act), also known as the 2008 Farm Bill. The Act provides for the creation of the Consultative Group.

DATES: *March 18, 2010*—Due date for submission of requests to make an oral statement at the public meeting. (See Requirement for Submissions and Meeting Procedures below.)

March 22, 2010—Due date to notify intention to attend the public meeting without making a statement or to request special accommodations.

March 29, 2010—Public meeting for the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, Room 104–A, Jamie L. Whitten Building, 12th and Jefferson Drive, SW., Washington, DC 20250, beginning at 9:30 a.m.

April 30, 2010—Final date for submission of written statements.

ADDRESSES: You may make written submissions by any of the following methods: by mail to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250; or by hand (including DHL, FedEx, UPS, etc.) to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4133–S, 1400 Independence Ave., SW., Washington, DC 20250; or by e-mail to: *Steffon.Brown@fas.usda.gov;* or by fax to (202) 720–0340.

FOR FURTHER INFORMATION CONTACT: The Office of Negotiations and Agreements by phone on (202) 720–6219; by e-mail addressed to *Steffon.Brown@fas.usda.gov;* or by mail addressed to the Office of Negotiations and Agreements, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: In written submissions and statements to the Consultative Group as part of this public meeting, parties are asked to provide information or comment on the following issues:

(a) Examples of identification, monitoring, verification, and/or certification systems, or other models, that have been successful in reducing child labor and/or forced labor in the global supply chains within the agricultural sector or other industries;

(b) The roles and responsibilities that may be appropriate for the business sector and other stakeholders (governments, unions, non-governmental organizations, and others) in establishing independent, third-party monitoring and verification systems for the production, processing, and distribution of agricultural products or commodities;

(c) Other information that would be useful to the Consultative Group in meeting its mandate to develop recommendations relating to a standard set of practices for independent, third-party monitoring and verification for the production, processing, and distribution of agricultural products or commodities to reduce the likelihood that agricultural products or commodities imported into the United States are produced with the use of forced labor or child labor.

Section 3205 of the Food, Conservation, and Energy Act of 2008 (Farm Bill, Pub. L. 110–246) created *the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products* to develop recommendations relating to a standard set of practices for independent, third-party monitoring and verification for the production, processing, and distribution of agricultural products or commodities to reduce the likelihood that agricultural products or commodities imported into the United States are produced with the use of forced labor or child labor. Recommendations developed by the Consultative Group are to be submitted to the Secretary of Agriculture by June 18, 2010. By June 18, 2011, the Secretary is required to release guidelines for a voluntary initiative to enable entities to address issues raised by the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*). The guidelines must be published in the **Federal Register** and made available for public comment for a period of 90 days. The Consultative Group will terminate on December 31, 2012.

On September 23, 2009, Secretary of Agriculture Thomas J. Vilsack appointed 13 members to the Consultative Group. The group consists of both government and non-government members, including

members from USDA; the U.S. Department of Labor; and the U.S. Department of State. Non-government members include three members from the agriculture-related private sector; two members from institutions of higher education and research; one member from an organization providing independent, third-party certification services for labor standards; and three members from non-profit organizations with expertise on international child labor and forced labor issues.

Requirements for Submissions and Meeting Procedures

Submissions in response to this notice must be made in English with any written submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. By March 18, 2010, all interested parties wishing to make an oral statement at the meeting must submit the name, address, telephone number, facsimile number, and e-mail address of the attendee(s) representing their organization by e-mail to *Steffon.Brown@fas.usda.gov.* Requests to present oral statements must be accompanied by a written statement which, at a minimum, identifies key issues to be addressed in the oral statement. Depending on the number of identified participants, oral statements before the Consultative Group may be subject to time limits in order to accommodate all participants. The meeting will be open to the public, and a transcript will be made available for public inspection or can be purchased from the reporting company. USDA is a controlled access facility. Therefore, individuals who wish to attend the meeting without making a statement must also register with the Consultative Group so that arrangements can be made for them to be allowed to enter the facility. Persons who wish to register or to request special accommodations for a disability or other reasons must submit a notification by e-mail to *Steffon.Brown@fas.usda.gov.* by March 22, 2010. No electronic media coverage will be allowed. Press inquiries should be directed to the USDA, Office of Communications at (202) 720–4623.

Signed at Washington, DC on March 4, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–5227 Filed 3–8–10; 4:15 pm]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), will begin accepting Trade Adjustment Assistance (TAA) for Farmers petitions for fiscal year 2010 beginning March 11, 2010. Petitioners may file a form FAS–930 or their own submission setting forth the information required by 7 CFR part 1580.201(c) with FAS from March 11, 2010, through April 14, 2010.

Petitioners must file their petition in accordance with 7 CFR part 1580.201. The petition must be received by the TAA for Farmers Staff by close of business April 14, 2010. The petition must be sent in writing to the Foreign Agricultural Service, OTP/IPERD, MS–1021, Washington, DC 20250–1021, or by facsimile to (202) 720–0876, or by e-mail to *tradeadjustment@fas.usda.gov.* The use of fax or e-mail is recommended.

SUPPLEMENTARY INFORMATION: The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) reauthorized the Trade Adjustment Assistance for Farmers program as established by Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210), which amended the Trade Act of 1974. The statute authorizes an appropriation of not more than $90 million for each fiscal year 2009 through 2010, and $22.5 million for the period October 1 through December 31, 2010, to carry out the program. The regulations covering the program are found at 7 CFR part 1580.

Under this program, the U.S. Department of Agriculture (USDA) provides technical assistance and cash benefits to eligible producers of raw agricultural commodities and fishermen (jointly referred to as "producers") when the FAS Administrator determines that increased imports of raw agricultural commodities, aquaculture products, or wild-caught aquatic species (each referred to as "commodity") have contributed importantly to a greater than 15 percent decrease in the national average price, or quantity of production, or value of production, or cash receipts for the commodity specified in the petition compared to the average of the 3 preceding marketing years.

To qualify, a group of producers or its authorized representative must petition the Administrator (FAS) for trade adjustment assistance. Petitions will be reviewed for completeness and timeliness. Once the petition is completed in accordance with 7 CFR part 1580.201, a notice of acceptance of the petition will be published in the **Federal Register**. An investigation will be initiated to verify whether or not for the most recent marketing year and for the commodity produced by the group, increased imports contributed importantly to a greater than 15 percent decrease in the national average price, or quantity of production, or value of production, or cash receipts for the agricultural commodity specified in the petition, compared to the average of the 3 preceding marketing years. If any one of these conditions is met, the Administrator (FAS) will certify the group as eligible for trade adjustment assistance and publish a notice of the certification in the **Federal Register**.

Eligible producers covered by the certification must file individual applications for assistance with the Farm Service Agency, USDA, within 90 days of the certification.

FOR FURTHER INFORMATION OR ASSISTANCE IN COMPLETING FORM FAS–930, CONTACT: The Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the website for the TAA for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa/taa.asp.*

Dated: February 25, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–5238 Filed 3–10–10; 8:45 am]

BILLING CODE 3410–10–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Tuesday, March 16, 2010; 10:15 a.m.–11 a.m.

PLACE: Middle East Broadcasting Networks, Inc., 7600 Boston Blvd., Suite D, Springfield, VA 22153.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept

secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2010–5410 Filed 3–9–10; 11:15 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 12–2010]

Foreign–Trade Zone 170 - Jeffersonville, Indiana, Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Ports of Indiana, grantee of Foreign–Trade Zone 170, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general–purpose zones and can permit significantly greater flexibility in the designation of new "usage–driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000–acre activation limit for a general–purpose zone project. The application was submitted pursuant to the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u) and the regulations of the Board (15 CFR part 400). It was formally filed on February 22, 2010.

FTZ 170 was approved by the Board on December 27, 1990 (Board Order 495, 56 FR 673, 1/8/91) and expanded on July 23, 1997 (Board Order 907, 62 FR 40796, 7/30/97) and September 24, 2004 (Board Order 1355, 69 FR 58884, 10/1/04). The general–purpose zone currently consists of the following sites: *Site 1*: (993 acres) - Clark Maritime Center Complex on Utica Pike at Port Road, Jeffersonville; *Site 2*: (22 acres) - Clark County Airport between State Route 31 and the airport terminal, Sellersburg; and, *Site 3*: (2,000 acres) - within the 10,000 acre former Indiana Army Ammunition Plant at 11452 State Road 62, Charlestown, Clark County, Indiana.

The grantee's proposed service area under the ASF would be Jackson, Washington, Harrison, Floyd, Clark and Scott Counties. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Louisville Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include all of its sites as "magnet sites" and proposes that *Site 1* be exempt from sunset time limits that otherwise apply to sites under the ASF. No usage–driven sites are being proposed at this time. In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 10, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 25, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Claudia Hausler at Claudia.Hausler@trade.gov or (202)482–1379.

Dated:February 22, 2010

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–5293 Filed 3–10–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 14–2010]

Foreign–Trade Zone 70 - Detroit, Michigan, Application for Expansion

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Greater Detroit Foreign Trade Zone, Inc., grantee of FTZ 70, requesting authority to expand FTZ 70 to include two new sites in Wayne County, Michigan, within the Detroit Michigan Customs and Border Protection Port of Entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 24, 2010.

FTZ 70 was approved on July 21, 1981 (Board Order 176, 46 F.R. 38941, 7/30/81), reorganized on April 15, 1985 (Board Order 299, 50 FR 16119, 4/24/85) and expanded on November 27, 1989 (Board Order 453, 54 FR 50258, 12/5/89), April 20, 1990 (Board Order 471, 55 F.R. 17775, 4/27/90), February 20, 1996 (Board Order 802, 61 FR 7237, 2/27/96), August 26, 1996, (Board Order 843, 61 FR 46763, 9/5/96), April 5, 2001 (Board Order 1162, 66 FR 19423, 4/16/01), May 23, 2005, (Board Order 1395, 70 FR 32570, 6/3/05) and June 22, 2007 (Board Order 1515, 72 FR 35968, 7/2/07). The general–purpose zone currently consists of 33 sites in the Detroit, Michigan area

The applicant is requesting authority to expand the zone to include two new sites in Wayne County, Michigan as follows: *Proposed Site 34* (33 acres) located at 6837 Wyoming Street, Dearborn, and *Proposed Site 35* (39 acres) located at 9400 McGraw Street, Detroit, Michigan Both sites will be operated by Dearborn Steel Center, Inc. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 10, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 25, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's

website, which is accessible via www.trade.gov/ftz.

For further information, contact Claudia Hausler at Claudia.Hausler@trade.gov or (202) 482–1379.

Dated: February 24, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–5281 Filed 3–10–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU32

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice; intent to issue exempted fishing permits, request for comment.

SUMMARY: NMFS announces the intent to issue exempted fishing permits (EFPs) to Pacific whiting shoreside vessels and first receivers that participate in a maximized retention and monitor program for the 2010 Pacific whiting shoreside fishery. EFPs are needed to allow vessels to retain catch in excess of the cumulative limits and to retain prohibited species until offloading. EFPs are also needed to allow first receivers to possess Pacific whiting deliveries with prohibited species, to possess catch that is in excess of cumulative limits, and to use hopper type scales to derive accurate catch weights prior to sorting. Issuance of the EFPs would allow NMFS to collect catch data on incidentally caught species, including salmonids listed under the Endangered Species Act, and would allow new components of an overall monitoring program to continue to be investigated before implementation of a regulatory program.

DATES: Comments must be received by March 26, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–XU32, by any one of the following methods:

- E-mail: *whitingEFP@noaa.gov*. Include 0648–XU32 in the subject line of the message.
- Fax: 206–526–6736, Attn: Becky Renko
- Mail: Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

Instructions: Attachments to e-mail comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Kevin Duffy at (206) 526–6140.

SUPPLEMENTARY INFORMATION: This action is authorized by the Magnuson Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745 which states that EFPs may be used to authorize fishing activities that would otherwise be prohibited in order to collect data among other activities. NMFS Northwest Region sent a letter to the Pacific Fishery Management Council (Council) that included a proposal for issuance of EFPs to vessels and first receivers participating in the 2010 Pacific whiting shoreside fishery. The Council considered the EFP activity at their November 2009 meeting. If issued, the EFPs would provide for a maximized retention and monitoring program for the Pacific whiting shoreside fishery. The maximized retention and monitoring program requirements specified in the EFP are intended to allow for the Pacific whiting shoreside fishery to be efficiently prosecuted while providing accurate catch data such that the Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act requirements for this fishery are adequately met.

The issuance of EFPs would allow approximately 40 vessels to delay sorting of groundfish catch and to retain catch in excess of cumulative trip limits and prohibited species catch until offloading. These activities are otherwise prohibited by regulations at 50 CFR 660.306(a)(10) and 50 CFR 660.306(a)(2) respectively.

Additionally, issuance of the EFPs to approximately 15 first receivers (generally land-based processing facilities) would allow first receivers to possess more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period. The possession of catch in excess of the cumulative limits is otherwise prohibited by regulations at 50 CFR 660.306(a)(10). In addition, the EFPs would include an allowance for first receivers to use hopper type scales to derive an accurate total catch weight prior to sorting. Regulations pertaining to sorting at § 660.370(h)(6) and prohibitions at § 660.306(a)(7) require vessels to sort the catch before weighing.

Issuance of the EFPs would allow for the collection of information on the catch of salmon, non-whiting groundfish, and other non-groundfish species incidentally taken with Pacific whiting. These data are needed to monitor the attainment of the shore based whiting allocation while assuring that the fishery specifications (bycatch limits, species allocations, OYs, and biological opinion thresholds) are not exceeded. Because whiting flesh deteriorates rapidly once the fish are caught, whiting must be minimally handled and immediately chilled to maintain the flesh quality. Allowing Pacific whiting shoreside vessels to retain unsorted catch will also enable whiting quality to be maintained.

At the June 2007 Pacific Fishery Management Council (PFMC) meeting, the PFMC recommended that NMFS implement a maximized retention program in Federal regulations that would allow full retention of Pacific whiting catch by the vessels, that is delivered to first receivers on shore. The terms and conditions of the EFPs used in 2008 and 2009 were consistent with the Council's June 2007 recommendation for implementing the provisions of Amendment 10 to the Pacific Coast Groundfish Fishery Management Plan (FMP), which allows implementation of this program. Although it was expected that a regulatory program would be in place at this time, it has not yet been implemented. At the June 2009 meeting the Council recommended a preferred alternative for implementation of a trawl rationalization program under Amendment 20 to the FMP that would change the future management and monitoring needs for the Pacific whiting shoreside fishery. EFPs will continue to be used until regulations implementing Amendment 10 to the groundfish FMP are implemented, or until tracking and monitoring regulations implementing the trawl rationalization program under Amendment 20 are effective. Additional information collected under this EFP program will benefit the development tracking and monitoring provisions of Amendment 20 to the groundfish FMP.

The vessel EFPs would require Pacific whiting shoreside vessels to dump unsorted catch directly below deck and would allow unsorted catch to be landed, providing that an electronic monitoring system (EMS) is used on all fishing trips to verify retention of catch at sea. The EMS has shown to be an effective tool for accurately monitoring catch retention and identifying the time and location of discard events. The EFPs would include provisions for EMS, paid for by the vessels, similar to the 2009

EFP and similar to the proposed Federal regulatory program.

Proposed Federal regulations for a maximized retention and monitoring program would also require first receivers to have onshore monitoring conducted by catch monitors. Catch monitors are third-party employees, paid for by industry, and trained to NMFS standards. The EFP would include provisions for third-party catch monitors from a NMFS specified provider. Like the proposed Federal regulatory program under development, catch monitors used under the EFPs would be trained in techniques that would be used for the verification of fish ticket data and in species identification. Catch monitor duties include overseeing the sorting, weighing, and recordkeeping process, as well as gathering information on incidentally caught salmon. Catch monitors verify the accuracy of electronic fish ticket data used to manage the Pacific whiting shoreside fishery such that inaccurate or delayed information does not result in any fishery specifications (bycatch limits, species allocations, OYs, and biological opinion thresholds) being exceeded. To insure the integrity of sector-specific bycatch limits, the 2010 EFPs would require full catch monitor coverage.

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

Dated: March 5, 2010.

Alan D. Risenhoover

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

[FR Doc. 2010–5259 Filed 3–10–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU88

Marine Mammals; File No. 808–1735

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Andrew Read, Ph.D., Duke University Marine Laboratory, 135 Pivers Island Road, Beaufort, North Carolina 28516, has applied for an amendment to Scientific Research Permit No. 808–1735.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 12, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 808–1735 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 808–1735 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 808–1735, issued on June 27, 2007 (72 FR 36429), authorizes the permit holder to take humpback (*Megaptera novaeangliae*), blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), and Antarctic minke (*B. bonaerensis*) whales in the Southern Ocean to examine their foraging behavior relative to krill patches. The permit authorizes the close approach of whales during vessel surveys for photo-identification, behavioral observation, tracking, and incidental harassment. A subset of whales may be suction-cup tagged during surveys. The permit is valid through May 31, 2012. The permit holder is requesting the permit be amended to include authorization for the take of Arnoux's beaked whales (*Berardius arnouxii*) during vessel surveys in the Southern Ocean. Up to 200 whales would be closely approached annually for photo-identification, behavioral observation, and incidental harassment. Dr. Read is also requesting 10 takes for the suction-cup tagging of up 5 whales annually. The purpose of the research is to gain information on the distribution, biology, ecology, movement patterns, and behavior of these extremely rare marine mammals and generate a catalog of known individuals that can then be used for a mark-recapture experiment. The amendment would be valid for the life of the permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 4, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–5251 Filed 3–10–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce

ACTION: Notice and Opportunity for Public Comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

2/26/2010 through 3/4/2010

Firm	Address	Date accepted for filing	Products
API Heat Transfer Inc. Buffalo.	2777 Walden Ave Ave Buffalo, NY 14225.	2/26/2010	The Company manufactures shell and tube, aluminum air cooled and plate and frame heat exchangers for industrial thermal transfer needs for a broad range of industries.
Harlon's LA Fish, LLC d/b/a LA Fish.	606 Short Street Kenner, LA 70062.	2/26/2010	Processor of frozen fish for human consumption
Silberline Manufacturing Co., Inc.	130 Lincoln Drive Tamaqua, PA 18252.	2/26/2010	Silberline manufactures special effect and performance pigments.
Fluorolite Plastics, Inc.	2 Central Street Framingham, MA 01701.	3/1/2010	Fluorolite specializes in replacement fluorescent diffusers. Fluorolite Manufactures acrylic ceiling panels, prismatic sheet, diffuser profiles, fluorescent light shields, enclosed gasket fixtures, Lexalite, American Louver products, and outdoor polycarbonate lenses.
Fresh Air Manufacturing Compnay d/b/a FAMCO.	649 N Ralstin Street Meridian, ID 83642.	3/1/2010	FAMCO is a light duty manufacturer of sheet metal and plastic products for venting units for residential and some small commercial facilities.
Greene Plastics Company.	PO Box 178 Canonchet Hope Valley, RI 02832.	3/2/2010	Plastic beads and imitation gemstones are manufactured by injection molding using plastic, polystyrene and acrylic.
Petoskey Plastics, Incorporated.	One Petoskey Street Petoskey, MI 49770.	3/2/2010	The firm manufacturers polyethylene blown film products.
Arthur A. Oliver & Son, Inc.	PO Box 88, 2406 English High Point, NC 27261.	3/3/2010	The firm produces upholstery supplies including cardboard, fiber batting, and webbing products. Primary materials include paper, and polyester fiber.
Heritage Sign & Display, Inc.	344 Industrial Road Nesquehoning, PA 18240.	3/3/2010	Heritage is a custom manufacturer of point of purchase signs and displays. Our products include lighted signs, wood displays, acrylic displays and a host of others.
Kasten Clay Products, Inc.	713 Kasten Drive Jackson, MO 53755.	3/3/2010	The firm manufacturers and produces clay bricks.
Precision Tool, Die & Machine Co. Inc. d/b/a nth works.	6901 Preston Highway Louisville, KY 40219.	3/3/2010	The firm produces steel parts that are put through stamping, welding, & graining processes. Primary materials include steel.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 5, 2010.

Bryan Borlik,

Program Director.

[FR Doc. 2010–5216 Filed 3–10–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–837]

Certain Magnesia Carbon Bricks from Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that certain magnesia carbon bricks (bricks) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to a request from the respondent, we are postponing for 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

DATES: *Effective Date:* March 11, 2010.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Terre Keaton Stefanova, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4136 and (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2009, the Department initiated the antidumping duty investigation of BRICKS from Mexico. *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 42852 (August 25, 2009) (Initiation Notice). The petitioner in this investigation is Resco Products Inc.

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice*, 74 FR at 42853. *See also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997). For further details, see the "Scope Comments" section of this notice, below. The Department also set aside a time for parties to comment on product characteristics for use in the antidumping duty questionnaire. During September 2009, we received product characteristic comments from the petitioner and RHI–Refmex S.A. de C.V. (Refmex), a Mexican producer and exporter of the subject merchandise. For an explanation of the product–comparison criteria used in this investigation, see the "Product Comparisons" section of this notice, below.

On September 29, 2009, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of bricks from Mexico are materially injuring the U.S. industry, and the ITC notified the Department of its finding. *See Certain Magnesia Carbon Bricks form China and Mexico*, 74 FR 49889 (September 29, 2009); *see also* "Investigation No. 701–TA–468 and 731–TA–1166–67 (Preliminary)," USITC Publication 4100 (September 2009).

On September 29, 2009, we selected Refmex as the sole mandatory respondent in this investigation. *See* Memorandum entitled: "Antidumping Duty Investigation of Certain Magnesia Carbon Bricks from Mexico - Selection of Respondents for Individual Review," dated September 29, 2009. We subsequently issued the antidumping questionnaire to Refmex on September 30, 2009. Refmex submitted responses to sections A (*i.e.*, the section covering general information about the company), B (*i.e.*, the section covering comparison market sales) and C (*i.e.*, the section covering U.S. sales) of the antidumping duty questionnaire on November 23, 2009. We issued supplemental section A, B, and C questionnaires, to which Refmex responded during January and February 2010.

On December 8, 2009, the petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination. Pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination of this investigation until February 24, 2010. *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 74 FR 66954 (December 17, 2009). As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary determination of this investigation is now March 3, 2010. *See* Memorandum to the Record regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

On December 11, 2009, the petitioner alleged that Refmex made comparison–market sales of bricks at prices below the cost of production (COP) during the period of investigation (POI).

On January 6, 2010, we initiated an investigation to determine whether Refmex made comparison–market sales of bricks at prices below the COP during the POI. *See* Memorandum entitled "The Petitioner's Allegation of Sales Below the Cost of Production for RHI RefMex S.A. de C.V.," dated January 6, 2010. As a result, we requested that Refmex respond to section D of the questionnaire (*i.e.*, the section covering COP and constructed value (CV)). *See* Memorandum entitled: "Telephone Conversation with RHI–Refmex Counsel on Initiation of COP Investigation and Submission of Response to Section D of the Department's Questionnaire," dated January 7, 2010. We issued a supplemental section D questionnaire to Refmex in February 2010, and received a response later that month.

The petitioner submitted comments for consideration with respect to the preliminary determination on February 12, 2010. Refmex responded to those comments on February 17, 2010.

On February 17, 2010, Refmex requested that, in the event of an affirmative preliminary determination in this investigation, the Department: 1) postpone its final determination by 60 days, in accordance with 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii); and 2) extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. For further discussion, see the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice, below.

Period of Investigation

The POI is July 1, 2008, to June 30, 2009. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise under investigation consists of certain chemically–bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (MgO) by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti–slip treatments or metal casing) and regardless of whether or not antioxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, and 6815.99 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. On September 8, 2009, Pilkington North America Inc. (PNA), a U.S. importer of BRICKS from the People's Republic of China (PRC) and Mexico, filed comments concerning the scope of this investigation and the concurrent antidumping duty and countervailing duty investigations of certain magnesia carbon bricks from the PRC. In its submission, PNA requested that the Department amend the scope of these investigations to exclude ceramic–bonded magnesia bricks with or without trace amounts of carbon, or clarify that this product is outside the scope of these investigations. According to PNA, the ceramic–bonded magnesia bricks it

imports are clearly not within the intended scope of these investigations. The petitioner did not file comments on PNA's submission. On February 24, 2010, the Department issued a memorandum confirming that ceramic bonded magnesia bricks are not included in the scope of the investigations. *See* Memorandum entitled "Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Scope Comments."

Product Comparisons

We have taken into account the comments that were submitted by the interested parties concerning product–comparison criteria. In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the "Scope of Investigation" section, above, and sold in Mexico during the POI are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We have relied on six criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product: 1) magnesium oxide content range, 2) fused magnesia content range, 3) antioxidants, 4) carbon content range, 5) post–molding treatments, and 6) additives. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above, which were made in the ordinary course of trade.

Fair Value Comparisons

To determine whether Refmex' sales of bricks from Mexico to the United States were made at LTFV, we compared the constructed export price (CEP) to normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1) of the Act, we compared POI weighted–average CEPs to POI weighted–average NVs.

In addition to selling bricks to unaffiliated customers, Refmex reported that it ships some subject merchandise in the U.S. and Mexican markets under "Full Line Service Contracts." Under these contracts, Refmex claims that it or its affiliates consume bricks as part of broader service agreements with their customers. Refmex did not include bricks shipped in conjunction with these service contracts in its sales listings. Refmex claimed that the quantity of bricks shipped in these instances constitutes a relatively small percentage of the total quantity of bricks shipped to U.S. and Mexican customers during the POI. Refmex also claimed that, in fulfilling these contracts, it does not generate invoices specifying a quantity or price for the bricks shipped, and, thus, does not record sales of bricks in its accounting system. Rather, customers pay Refmex or its affiliates based on other terms specified in the contracts.

Our analysis of the information Refmex provided, including examples of Full Line Service Contracts, supports Refmex' representations regarding the complexity of assigning values to the bricks shipped in the fulfillment of these contracts. Based on this analysis and Refmex' claim that the shipment of bricks in fulfillment of these contracts constitutes a relatively small percentage of the total bricks shipped to U.S. customers during the POI, we have excluded bricks consumed under these circumstances in both the home and U.S. markets from our margin analysis.

Constructed Export Price

Pursuant to section 772(b) of the Act, we calculated CEP for those sales where the subject merchandise was first sold in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporters, to a purchaser not affiliated with the producer or exporter. In addition, we calculated CEP for those sales where the subject merchandise was first sold in the United States before the date of importation by Refmex' affiliate, Veitsch–Radex America, Inc., located in Mokena, Illinois (VRA), to unaffiliated purchasers. Refmex classified these latter sales as export price (EP) sales because it initially reported that these sales were made outside the United States by its affiliate Veitsch–Radex America, Inc., located in Burlington, Ontario, Canada (VRC). Subsequently, Refmex clarified that these sales were made in the United States by VRA. Accordingly, we have reclassified them as CEP sales because the merchandise was sold in the United States, before importation, by a seller affiliated with the producer or exporter to a purchaser not affiliated with the producer or exporter, consistent with section 772(b) of the Act. *See, e.g., Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 10022, 10023 (March 9, 2009), unchanged in *Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 33995 (July 14, 2009); and *Certain Cut–to-Length Carbon–Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Administrative Review in Part*, 72 FR 65701, 65703–04 (November 23, 2007), unchanged in *Certain Cut–to-Length Carbon–Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 73 FR 15132 (March 21, 2008).

We based CEP on the packed, ex–warehouse or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we adjusted prices for billing adjustments, discounts and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, inland freight from the plant to the U.S. warehouse, U.S. brokerage and handling expenses (including customs fees), pre–sale warehousing expenses, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses incurred by or for the account of the producer or exporter in selling the subject merchandise, which are associated with commercial activities in the United States, no matter where or when paid, including direct selling expenses (*i.e.*, credit expenses, technical service expenses, and warranty expenses), and indirect selling expenses (including inventory carrying costs). We also deducted from CEP an amount for profit, in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

A. Home Market Viability and Comparison–Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Refmex' volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C) of the Act. Based on this comparison, we determined that Refmex had a viable home market during the POI. Consequently, we based NV on home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on

sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses, and profit. For EP sales, the U.S. LOT is based on the starting price of the sales in the U.S. market, which is usually from exporter to importer. For CEP sales, the U.S. LOT is based on the starting price of the U.S. sales, as adjusted under section 772(d) of the Act, which is from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 - 61733 (November 19, 1997) (*Plate from South Africa).*

In this investigation, we obtained information from Refmex regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution.

Refmex reported that it made all sales in the U.S. market to end–users. For CEP sales, Refmex reported that its affiliate VRA, supported by another affiliate, VRC, made sales through five channels of distribution: 1) direct shipments from the Mexican plant to the U.S. customer; 2) ex–U.S. warehouse; 3) delivered to the U.S. customer from a U.S. warehouse; 4) on consignment basis ex–U.S. warehouse; and 5) on consignment basis delivered to the U.S. customer from a U.S. warehouse.

Because all of Refmex' U.S. sales were CEP sales, we examined only the selling functions performed by Refmex for these sales, not the selling functions performed by its affiliates, consistent with our normal practice. *See Plate from South Africa*, 62 FR at 61732. We found that the only selling functions that Refmex performed for all CEP sales were packing, inventory maintenance (*i.e.*, in Mexico prior to shipment to the U.S. customer or to U.S. warehouses for resale by Refmex affiliates to unaffiliated U.S. customers), and order input/processing. The selling functions performed for all CEP sales were identical. Therefore, we determined that all CEP sales constituted one LOT.

With respect to home market sales, Refmex reported that sales were made to end users through two channels of distribution: 1) direct to customers; and 2) consignment sales from consignment inventories. We examined the reported selling activities and found that Refmex performed the following selling functions for both sales channels in the home market: sales forecasting, strategic/economic planning, engineering services, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, granting of rebates, after–sales services, and freight and delivery arrangements. Furthermore, we found that Refmex performed most of these selling functions at the same relative level of intensity for all customers in the comparison market. While we note some difference in intensity in the inventory maintenance activity between direct sales and consignment sales, this difference alone is not sufficient to warrant a finding that the two sales channels constitute different LOTs in the home market. Therefore, based on our overall analysis, we found that all home market sales constituted one LOT.

In comparing the home market LOT to the CEP LOT, we found that the selling activities performed by Refmex for its CEP sales, as described above, were significantly fewer than the selling activities that it performed for its home market sales. Therefore, Refmex provided many more selling functions for its home market sales than it provided for its CEP sales, thus making the home market LOT more advanced than the CEP LOT.

Based on the above, we could not match CEP sales to sales at the same LOT in the home market, nor could we determine an LOT adjustment based on Refmex' home market sales because there is only one LOT in the home market. Therefore, it is not possible to determine if there is a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction. *See* section 773(a)(7)(A) of the Act. Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Consequently, because the data available do not form an appropriate basis for making an LOT adjustment, even though the home market LOT is at a more advanced stage of distribution than the CEP LOT, we made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling expenses incurred on the home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. *See id.*

C. Cost of Production Analysis

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A) and interest expenses (see "Test of Home Market Sales Prices" section below for treatment of home market selling expenses and packing costs). We relied on the COP data submitted by Refmex in its January 27, 2010, response to section D of the questionnaire, except where noted below.

We excluded packing expenses from the denominators of the reported G&A and interest expense ratios. In addition, we revised the numerator of the interest expense ratio to exclude the interest income offset, because Refmex did not demonstrate that this income was generated from certain short–term interest–bearing assets. We applied the revised ratios to Refmex' reported total cost of manufacturing to determine the revised G&A and financial interest expenses. *See* Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustment RHI–Refmex S.A. de C.V.," dated March 3, 2010.

For the preliminary determination, we have relied upon the POI weighted–average COP Refmex reported. However, depending on the extent to which production costs changed throughout the cost reporting period, we are considering whether it is more appropriate to use the Department's alternative cost averaging methodology for the final determination. Accordingly, we have requested product–specific quarterly cost information from Refmex

for consideration prior to the final determination.

2. Test of Home Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether the sale prices were below the COP. The sales prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses. For purposes of this comparison, we used the COP exclusive of selling and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we do not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than COP, we determine that such sales have been made in "substantial quantities." *See* section 773(b)(2)(C) of the Act. Further, we determine that the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below–cost sales occurring during the entire POI. In accordance with section 773(b)(2)(D) of the Act, we compare prices to the POI average costs to determine whether the prices permit recovery of costs within a reasonable period of time.

In this case, we found that, for certain specific products, more than 20 percent of Refmex' sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison–Market Prices

We based NV for Refmex on packed, ex–factory or delivered prices to unaffiliated customers in the home market. We made deductions from the starting price, where appropriate, for foreign inland freight and warehousing expenses under section 773(a)(6)(B)(ii) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance–of-sale adjustments for imputed credit expenses and technical service expenses. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Refmex reported royalty expenses incurred on home market sales and paid to an affiliate, Refractory Intellectual Property (REFIP) GmbH & Co. KG., of Refmex' parent company, RHI AG. We have disallowed this selling expense claim, as Refmex was unable to demonstrate that the royalty payments made to its affiliate were at arm's length.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for Refmex.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of bricks from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated in the chart below. These suspension–of-liquidation instructions will remain in effect until further notice.

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
RHI–Refmex S.A. de C.V.	54.73
All Others	54.73

All–Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "All Others" rate shall be an amount equal to the weighted average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Refmex is the only respondent in this investigation for which the Department calculated a company–specific rate. Therefore, for purposes of determining the all–others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted–average dumping margin calculated for Refmex, as referenced above. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from Indonesia*, 72 FR 30753, 30757 (June 4, 2007), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007).

Disclosure

The Department will disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters, who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On February 17, 2010, Refmex requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Refmex requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. In accordance

with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because: (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and, (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is

affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of bricks from Mexico are materially injuring, or threatening material injury to, the U.S. industry (*see* section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. *See also* 19 CFR 351.310(d). If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: March 3, 2010.

Carole A. Showers,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–5369 Filed 3–10–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF ENERGY

[Case No. RF–013]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Haier From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

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

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and request for public comments.

SUMMARY: This notice announces receipt of and publishes the Haier Group and Haier America Trading, L.L.C. (Haier) petition for waiver (hereafter, "Petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Haier's product lines that utilize a control logic that changes the wattage of the anti-sweat heaters based upon the ambient relative humidity conditions to prevent condensation. The existing test procedure does not take humidity or adaptive control technology into account. Therefore, Haier has suggested an alternate test procedure that considers adaptive control technology when measuring energy consumption. DOE solicits comments, data, and information concerning Haier's Petition and the suggested alternate test procedure. DOE also publishes notice of the grant of an interim waiver to Haier.

DATES: DOE will accept comments, data, and information with respect to the Haier Petition until, but no later than, April 12, 2010.

ADDRESSES: You may submit comments, identified by case number "RF–013," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [Case No. RF–013], and/or "Haier Petition" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerators and refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel,

Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309). Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for residential refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. (10 CFR part 430.27(l)). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. (10 CFR 430.27(b)(1)(iii)). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. (10 CFR 430.27(l)). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2); 430.27(g)). An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. (10 CFR 430.27(h)).

II. Petition for Waiver of Test Procedure

On January 11, 2010, Haier filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Haier is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Haier's technology is similar to that used by General Electric Company (GE), Whirlpool Corporation (Whirlpool), and Electrolux for refrigerator-freezers which were the subject of petitions for waiver published April 17, 2007 (72 FR 19189), July 10, 2008 (73 FR 39684), and June 4, 2009 (74 FR 26853), respectively. GE's waiver was granted on February 27, 2008 (73 FR 10425). Whirlpool's waiver was granted on May 5, 2009 (74 FR 20695). Electrolux' waiver was granted on December 15, 2009. (74 FR 66338). DOE also granted Samsung Electronics America, Inc. (Samsung) an interim waiver for similar products on December 15, 2009 (74 FR 66340).

In its petition, Haier seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure takes neither ambient humidity nor adaptive technology into account. Therefore, Haier states that the test procedure does not accurately measure the energy consumption of Haier's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Haier has submitted to DOE for approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line. Haier's alternate test procedure is the same in all relevant particulars as that prescribed for other manufacturers for refrigerators and refrigerator-freezers that are equipped with the same type of technology. The alternate test procedure applicable to these products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the decision and order that DOE published in the **Federal Register** on February 27, 2008. (73 FR 10425). DOE believes that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

III. Application for Interim Waiver

Haier also requests an interim waiver from the existing DOE test procedure. Under 10 CFR 430.27(b)(2), each application for interim waiver "shall demonstrate likely success of the petition for waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the application for interim waiver." An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)).

DOE determined that Haier's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Haier might experience absent a favorable determination on its application for interim waiver. However, DOE understands that absent an interim waiver, Haier's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent products for which DOE previously granted waivers, and would be required to represent a higher energy consumption for essentially the same product. Furthermore, it appears likely that Haier's Petition for Waiver will be granted, and it is desirable for public policy reasons to grant Haier immediate relief pending a determination on the petition for waiver. As stated above, DOE has already granted similar waivers to GE, Whirlpool, and Electrolux, as well as an interim waiver to Samsung, because the test procedure does not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. The rationale for granting these waivers is equally applicable to Haier, which has products containing similar relative humidity sensors and anti-sweat heaters. DOE has also concluded that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

For the reasons stated above, DOE grants Haier's application for interim waiver from testing of its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters. Therefore, *it is ordered that:*

The application for interim waiver filed by Haier is hereby granted for Haier's refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters, subject to the specifications and conditions below.

1. Haier shall not be required to test or rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters based on the test procedure under 10 CFR part 430 subpart B, appendix A1.

2. Haier shall be required to test and rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters according to the alternate test procedure as set forth in section IV, "Alternate Test Procedure."

The interim waiver applies to the following basic model groups:

RBFS21SIBP	RBFS21SIBE	RBFS21SIBS	RBFS21TIBP	RBFS21TIBE
RBFS21TIBS	RBFS21EDBP	RBFS21EDBE	RBFS21EDBS	HB21QC10NP
HB21QC10NE	HB21QC10NS	HB21QC40NP	HB21QC40NE	HB21QC40NS
HB21QC70NP	HB21QC70NE	HB21QC70NS	HB21FC10NP	HB21FC10NE
HB21FC10NS	HB21FC40NP	HB21FC40NE	HB21FC40NS	HB21FC70NP
HB21FC70NE	HB21FC70NS	HB25QC10NP	HB25QC10NE	HB25QC10NS
HB25QC40NP	HB25QC40NE	HB25QC40NS	HB25QC70NP	HB25QC70NE
HB25QC70NS	HB25FC10NP	HB25FC10NE	HB25FC10NS	HB25FC40NP
HB25FC40NE	HB25FC40NS	HB25FC70NP	HB25FC70NE	HB25FC70NS
H21BFC45				

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

Haier's new line of refrigerators and refrigerator-freezers contains sensors that detect ambient humidity and interact with controls that vary the effective wattage of anti-sweat heaters to evaporate excess moisture. The existing DOE test procedure cannot be used to calculate the energy consumption of these features. The variable anti-sweat heater contribution to the refrigerator's energy consumption is entirely dependent on the ambient humidity of the test chamber, which the DOE test procedure does not specify. The energy consumption of the anti-sweat heaters will be modeled and added to the energy consumption measured with the anti-sweat heaters disabled. The anti-sweat contribution to the product's total energy consumption will be calculated by the same methodology that was set forth in the GE Petition, as described below. The objective of this approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in refrigerators and refrigerator-freezers of typical consumer households across the United States.

To determine the conditions in a typical consumer household, GE compiled historical data on the monthly average outdoor temperature and humidity for the top 50 metropolitan areas of the U.S. over approximately the last 30 years. In light of the similarity of technologies at issue, Haier is using the same data compiled by GE for its determination of the anti-sweat heater energy use. Like GE, Whirlpool, and Electrolux, Haier includes in its test procedure a "system-loss factor" to calculate system losses attributed to operating anti-sweat heaters, controls, and related components.

For the duration of the interim waiver, Haier shall be required to test the products listed above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, Appendix A1, except that for the Haier products listed above only:

(A) The following definition is added at the end of Section 1:

1.13 "Variable anti-sweat heater control" means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3., except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested, is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be "off" during one test and "on" during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the "on" test will be the result of the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the "on" position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{on} = E + (Correction Factor)

Where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power
= A1 * (Heater Watts at 5% RH)
+ A2 * (Heater Watts at 15% RH)
+ A3 * (Heater Watts at 25% RH)
+ A4 * (Heater Watts at 35% RH)
+ A5 * (Heater Watts at 45% RH)
+ A6 * (Heater Watts at 55% RH)
+ A7 * (Heater Watts at 65% RH)
+ A8 * (Heater Watts at 75% RH)
+ A9 * (Heater Watts at 85% RH)
+ A10 * (Heater Watts at 95% RH)

Where A1–A10 derive from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F.

System-loss Factor = 1.3

V. Summary and Request for Comments

Through today's notice, DOE grants Haier an interim waiver from the specified portions of the test procedure applicable to Haier's new line of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters, and announces receipt of Haier's petition for waiver from those same portions of the test procedure. DOE publishes Haier's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Haier's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. Haier is required to follow this alternate procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent decision and order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Robert Cunningham, Senior Vice President of Product Innovation and Engineering, Major Appliances, Haier America Trading, L.L.C., 1356 Broadway, New York, New York 10018; Telephone: (212) 594–3330. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on March 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

January 11, 2010.

The Honorable Cathy Zoi, Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–10, 1000 Independence Avenue, SW, Washington, DC 20585.

Re: *Petition for Waiver and Application for Interim Waiver for Refrigerator-Freezers with Adaptive Anti-Sweat Heater Technology*

Dear Assistant Secretary Zoi: Pursuant to 10 CFR 430.27, Haier Group and Haier America Trading, L.L.C.[1] respectfully submit this Petition for Waiver and Application for Interim Waiver for refrigerator-freezer models that incorporate adaptive anti-sweat heater technology. The Department of Energy (DOE) has already granted waiver relief to General Electric, Whirlpool, Electrolux, and Samsung for products with such technology. Without waiver relief, Haier will be placed at a severe competitive disadvantage.

I. Identification of Petitioner/Applicant

Haier is a manufacturer and marketer of major appliances and electronics, including, but not limited to, refrigerators, freezers, air conditioners, dishwashers, microwaves, laundry products, small appliances, electronics, vacuums, wine cellars and televisions.

The parent entity is Haier Group, whose corporate headquarters are located at 1 Haier Road, High-Tech Zone, Qingdao 266101, China. Haier America Trading, L.L.C., a New York limited liability company, is the sales and marketing entity for Haier in the United States and elsewhere in the Western Hemisphere. Its headquarters are located at The Haier Building, 1356 Broadway, New York, New York 10018.

II. A Waiver Should Be Granted

Haier is developing, and intends shortly to introduce into the marketplace, refrigerator-freezers with anti-sweat heater technology that reacts according to different ambient conditions such as humidity and temperature. As with General Electric, Whirlpool, Electrolux, and Samsung, a waiver and interim waiver for Haier refrigerator-freezers with adaptive anti-sweat heater technology are warranted because DOE's current test procedure under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6291 *et seq.,* evaluates them in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data, and/or the basic models contain one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures. DOE's rules provide that a waiver "will be granted" in such situations. 10 CFR 430.27(l).

The current DOE test procedure, id. Part 430, Subpart B, Appendix A1, prevents Haier from accurately evaluating its refrigerator-freezers that have this adaptive anti-sweat heater technology. The DOE test procedure as applied to these products will yield different test results depending on the relative ambient relative humidity in the test chamber. The test procedure does not specify a value for the relative ambient humidity in the test chamber.

Haier's adaptive anti-sweat heater technology is similar to that used by General Electric, Whirlpool, Electrolux, and Samsung for refrigerator-freezers that were the subject of waiver relief. See, 74 FR 66338 (Dec. 15, 2009) (Electrolux; grant of waiver); id. 66340 (Dec. 15, 2009) (Samsung; grant of interim waiver); id. 26853 (June 4, 2009) (Electrolux; grant of interim waiver); id. 20695 (May 5, 2009) (Whirlpool; grant of waiver); 73 FR 10425 (Feb. 27, 2008) (General Electric; grant of waiver).

Therefore, Haier should not be required to test or rate its refrigerator-freezer product lines containing adaptive anti-sweat heaters technology on the basis of the test procedure under 10 CFR Part 430, Subpart B, Appendix A1. Instead, as with the other companies for which waiver relief has been granted, Haier should be required to test and rate these products line according to an alternative test procedure. The alternative test procedure would provide for the test to be run with the anti-sweat heater switch in the "off" position and then, because the test chamber is not humidity-controlled, there would be added to that result the kilowatt hours per day derived by calculating the energy used when the anti-sweat heater is in the "on" position.

Specifically, Haier should be required to test the products for which a waiver is granted according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR Part 430, Appendix A1, except that, for the Haier products:

(A) The following definition is added at the end of Section 1:

1.13 "*Variable anti-sweat heater control*" means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be "off" during one test and "on" during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the "on" test will be the result of the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

[1] For convenience, we sometimes refer generally herein to "Haier."

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the "on" position (E[on]), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E[ON] = E + (Heater Contribution) [note: called "correction factor" by General Electric]

where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position.

Heater Contribution n1 = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power
= A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
v+ A10 * (Heater Watts at 95%RH)

where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 [degrees] F ambient, and DOE reference temperatures of fresh food average temperature of 45 [degrees] F and freezer average temperature of 5 [degrees] F.

System-loss Factor = 1.3

* * * * *

The waiver should apply to the following model series. The actual model numbers will vary to account for year of manufacture, product color, or other features, but will always include anti-sweat technology whose energy impact is calculated in accordance with this petition.

RBFS21SIBP	RBFS21SIBE	RBFS21SIBS	RBFS21TIBP	RBFS21TIBE
RBFS21TIBS	RBFS21EDBP	RBFS21EDBE	RBFS21EDBS	HB21QC10NP
HB21QC10NE	HB21QC10NS	HB21QC40NP	HB21QC40NE	HB21QC40NS
HB21QC70NP	HB21QC70NE	HB21QC70NS	HB21FC10NP	HB21FC10NE
HB21FC10NS	HB21FC40NP	HB21FC40NE	HB21FC40NS	HB21FC70NP
HB21FC70NE	HB21FC70NS	HB25QC10NP	HB25QC10NE	HB25QC10NS
HB25QC40NP	HB25QC40NE	HB25QC40NS	HB25QC70NP	HB25QC70NE
HB25QC70NS	HB25FC10NP	HB25FC10NE	HB25FC10NS	HB25FC40NP
HB25FC40NE	HB25FC40NS	HB25FC70NP	HB25FC70NE	HB25FC70NS
H21BFC45				

The waiver should continue until a test procedure can be developed and adopted that will provide the U.S. market with a fair and accurate assessment of the Haier products.

III. An Interim Waiver Should Be Granted

Haier also requests immediate relief by grant of an Interim Waiver. Haier would be placed at a competitive disadvantage if an Interim Waiver is not granted to it, as the energy consumption data will not be comparable to that of other manufacturers that were granted waiver relief.

Furthermore, it is likely that Haier's Petition for Waiver will be granted, and it is desirable for public policy reasons to grant Haier immediate relief pending a determination on the Petition for Waiver. As stated above, DOE has already granted waiver relief to General Electric, Whirlpool, Electrolux, and Samsung because the DOE test procedure does not accurately represent the energy consumption of refrigerator-freezers containing this technology. The rationale for granting these waivers is equally applicable to Haier. DOE has also concluded that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. *See, e.g.,* 74 FR 66338, 66339 (Dec. 15, 2009); id. 66340, 66341 (Dec. 15, 2009).

IV. Persons To Be Notified

Manufacturers of all other basic models marketed in the United States and known to Haier to incorporate similar design characteristics as found in the Haier refrigerator-freezers include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Electrolux Home Products, Equator, Fisher & Paykel Appliances Inc., GE Appliances, Gorenje USA, Heartland Appliances, Inc., Kelon Electrical Holdings Co., Ltd., Liebherr Hausgerate, LG Electronics Inc., Miele, Inc., Northland Corporation, Samsung Electronics America, Inc., Sanyo Fisher Company, Sub-Zero Freezer Company, ULine, Viking Range, and Whirlpool Corporation. The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances, including refrigerator-freezers. Haier will notify all these entities as set forth in the Department's rules and provide them with a version of this Petition and Application.

V. Conclusion

DOE should grant a waiver and interim waiver for Haier refrigerator-freezers with adaptive anti-sweat heater technology. The waiver should continue until a test procedure can be developed and adopted that will provide the U.S. market with a fair and accurate assessment of the Haier products.

Haier certifies that all manufacturers of domestically marketed units of the same product type have been notified by letter of this petition and application. Copies of such letter and related certification are attached hereto.

Sincerely,
Robert Cunningham,
Senior Vice President of Product Innovation and Engineering, Major Appliances, Haier America Trading, L.L.C.

[FR Doc. 2010–5226 Filed 3–10–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

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

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under Section 9008(d) of the Food, Conservation, and Energy Act of 2008. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

Dates and Times: April 1, 2010 at 8 am to 5 pm; April 2, 2010 at 12:30 pm to 3 pm.

ADDRESSES: Hyatt Regency Crystal City, Washington Room A, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 418–1234.

FOR FURTHER INFORMATION CONTACT: Laura McCann, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766; E-mail: *laura.mccann@ee.doe.gov* or T.J. Heibel at (410) 997–7778 ext. 223; E-mail: *theibel@bcs-hq.com.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

• Update on USDA Biomass R&D Activities and Budgets
• Update on DOE Biomass R&D Activities and Budgets
• Panel Discussion on the *Arundo donax*
• Presentation from ARPA–E
• Presentation from EPA
• Committee Discussion on 2010 Work Plan

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Laura McCann at 202–586–7766; E-mail: *laura.mccann@ee.doe.gov* or T.J. Heibel at (410) 997–7778 ext. 223; E-mail: *theibel@bcs-hq.com.* You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at *http://www.brdisolutions.com/publications/default.aspx#meetings.*

Issued at Washington, DC, on March 4, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–5079 Filed 3–10–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12715–002]

Fairlawn Hydroelectric Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

March 4, 2010.

On January 4, 2010, the Fairlawn Hydroelectric Company, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Jennings Randolph Project, to be located the U.S. Army Corps of Engineers Jennings Randolph Dam, on the North Branch Potomac River, Garrett County, Maryland, and Mineral County, West Virginia.

The proposed project would utilize the existing U.S. Army Corps of Engineers' Jennings Randolph Dam and would consist of: (1) A proposed intake structure to be built on the upstream face of the dam; (2) a 720-foot-long penstock through the dam; (3) a proposed powerhouse containing 2 generating units with a total generating capacity of 14.0 MW; (4) a proposed 2/3-mile-long, 138 kV transmission line; (5) a tailrace, and (6) appurtenant facilities. The project would have an estimated average annual generation of 52.0 gigawatts-hours.

Applicant Contact: Mr. M. Clifford Phillips, Advanced Hydro Solutions LLC, 150 North Miller Road, Suite 450 C, Fairlawn, OH 44333, phone (330) 869–8451.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.*

Enter the docket number (P–12715) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5208 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13617–000]

KC Hydro LLC; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments

March 4, 2010.

On November 6, 2009, KC Hydro LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower development at North Unit Diversion Dam on the Deschutes River in Deschutes County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize the existing North Canal Diversion Dam, which is used by three irrigation districts, and would consist of the following new facilities: (1) An approximately 50-foot-long, 8- to 10-foot-diameter penstock to accommodate flows up to 800 cubic feet per second downstream of the dam; (2) a powerhouse containing a Francis turbine with an installed capacity of 1.8 megawatts; (3) an approximately 500-foot-long, 21-kilovolt transmission line; and (4) appurtenant facilities. The proposed project would have an average annual generation of 7.2 gigawatt-hours.

Applicant Contact: Kelly Sackheim, KC Hydro LLC, 5096 Cocoa Palm Way, Fair Oaks, CA 95628, phone: (916) 962–2271, e-mail: *oregon@kchydro.com.*

FERC Contact: Gina Krump, phone: (202) 502–6704, e-mail: *gina.krump@ferc.gov.*

Competing Applications: This application competes with Project No. 13560–000 filed August 27, 2009, and Project No. 13639–000 filed December 9, 2009.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please

contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13617) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5210 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2244–000]

Energy Northwest; Notice of Authorization for Continued Project Operation

March 4, 2010.

On March 7, 2008, Energy Northwest, licensee for the Packwood Lake Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Packwood Lake Hydroelectric Project is located on Lake Creek, a tributary to the Cowlitz River, in Lewis County in southwestern Washington.

The license for Project No. 2244 was issued for a period ending February 28, 2010. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2244 is issued to Energy Northwest for a period effective March 1, 2010 through February 28, 2011, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before February 28, 2011, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Energy Northwest is authorized to continue operation of the Packwood Lake Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5204 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 4, 2010.

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

Docket Numbers: EC10–44–000.

Applicants: Cresent Ridge, LLC.

Description: Supplemental Information for Crescent Ridge LLC.

Filed Date: 03/04/2010.

Accession Number: 20100304–5045.

Comment Date: 5 p.m. Eastern Time on Monday, March 15, 2010.

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

Docket Numbers: ER10–689–001.

Applicants: Virginia Electric and Power Company.

Description: Dominion Virginia Power submits substitute sheet to the JOA reflects the modifications.

Filed Date: 03/03/2010.

Accession Number: 20100304–0209.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–812–000.

Applicants: Power Choice, Inc.

Description: Application of Power Choice Inc for an Order Accepting Initial Market Based Rate Schedule and Granting Waivers and Blanket Authorizations.

Filed Date: 03/03/2010.

Accession Number: 20100303–0223.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–820–000.

Applicants: Detroit Edison Company.

Description: Detroit Edison Company submits Notice of Cancellation to Open Access Transmission Tariff, FERC Electric Tariff, Original Volume 2 to confirm the cancellation of Detroit Edison's OATT, effective 3/4/2010.

Filed Date: 03/03/2010.

Accession Number: 20100303–0225.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–821–000.

Applicants: Central Maine Power Company

Description: Central Maine Power Company submits its Engineering and procurement Agreement dated February 3, 2010 with Spruce Mt Wind, LLC designated as Original Service Agreement CMP–EP–2–S under Schedule 23 etc.

Filed Date: 03/03/2010.

Accession Number: 20100303–0224.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–822–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits an executed Meter Agent Service Agreement with Westar Energy, Inc Generation Services.

Filed Date: 03/02/2010.

Accession Number: 20100303–0220.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 23, 2010.

Docket Numbers: ER10–823–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with Westar Energy, Inc. *et al.*

Filed Date: 03/02/2010.

Accession Number: 20100303–0221.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 23, 2010.

Docket Numbers: ER10–824–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Service Agreement for Integration Transmission Service.

Filed Date: 03/02/2010.

Accession Number: 20100303–0222.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 23, 2010.

Docket Numbers: ER10–826–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits revised tariff sheets to reflect the actual 2009 value for billing for post-employment benefits and post-retirement benefits other than pensions.

Filed Date: 03/03/2010.

Accession Number: 20100304–0207.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–827–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits filing and acceptance an amendment to Service Agreement for Wholesale Distribution Service etc.

Filed Date: 03/01/2010.

Accession Number: 20100304–0208.

Comment Date: 5 p.m. Eastern Time on Monday, March 22, 2010.

Docket Numbers: ER10–828–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement with Virginia Electric Power Co. *et al.*

Filed Date: 03/03/2010.

Accession Number: 20100304–0206.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–829–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service etc. with Southwestern Public Service Co.

Filed Date: 03/03/2010.

Accession Number: 20100304–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–830–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool. Inc submits Service Agreement for Network Transmission Service with Kaw Valley Electric Cooperative etc.

Filed Date: 03/03/2010.

Accession Number: 20100304–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–831–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool. Inc. submits Service Agreement for Network Transmission Service with Nemaha Marshall Electric Cooperative etc.

Filed Date: 03/03/2010.

Accession Number: 20100304–0203.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–832–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits Service Agreement for Network Integration Transmission Service with Municipal Energy Agency of Nebraska *et al.*

Filed Date: 03/03/2010.

Accession Number: 20100304–0202.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–833–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revised pages to its Open Access Transmission Tariff intended to implement rate changes for KCP&L and GMO, which are transmission owners and pricing zones under SPP Tariff.

Filed Date: 03/03/2010.

Accession Number: 20100304–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: ER10–834–000.

Applicants: The Connecticut Light and Power Company.

Description: Connecticut Light and Power Company submits notice of canceling the Interconnection Agreement among Dominion Nuclear Connecticut, Inc.

Filed Date: 03/04/2010.

Accession Number: 20100304–0217.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–835–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement.

Filed Date: 03/04/2010.

Accession Number: 20100304–0216.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–836–000.

Applicants: Delmarva Power & Light Company.

Description: Delmarva Power & Light Company submits an executed construction agreement with City of Milford.

Filed Date: 03/04/2010.

Accession Number: 20100304–0215.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–837–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits First Revised Sheet 8 *et al.* to its FERC Electric Tariff, Fourth Revised Volume 1 to be effective 3/5/10.

Filed Date: 03/04/2010.

Accession Number: 20100304–0214.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

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

Docket Numbers: ES10–20–000.

Applicants: Ameren Services Company, Ameren Energy Generating Company, Central Illinois Public Service Company, Central Illinois Light Company, Union Electric Company.

Description: Supplemental Information of Ameren Services Company, *et al.*

Filed Date: 03/03/2010.

Accession Number: 20100303–5090.

Comment Date: 5 .p.m. Eastern Time on Monday, March 15, 2010.

Docket Numbers: ES10–27–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Application for Authorization of the Assumption of Liabilities and the Issuance of Securities Under Section 204 of the Federal Power Act of Wolverine Power Supply Cooperative, Inc.

Filed Date: 03/03/2010.

Accession Number: 20100303–5078.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH10–10–000.

Applicants: Sempra Energy.

Description: FERC–65B Waiver Notice of Material Change in Facts.

Filed Date: 02/05/2010.

Accession Number: 20100205–5115.

Comment Date: 5 p.m. Eastern Time on Friday, March 12, 2010.

Docket Numbers: PH10–11–000.

Applicants: SteelRiver Infrastructure Partners LP.

Description: SteelRiver Infrastructure Partners LP's Exemption Notification—FERC Form 65–A.

Filed Date: 03/03/2010.

Accession Number: 20100303–5087.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene

again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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

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

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

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–5203 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Crystal Lake Wind III, LLC, et al.; Notice of Effectiveness of Exempt Wholesale Generator Status

March 4, 2010.

	Docket Nos.
Crystal Lake Wind III, LLC	EG10–6–000
GardenGarden Wind, LLC	EG10–7–000
Star Point Wind Project LLC.	EG10–8–000
Nacogdoches Power, LLC	EG10–9–000
FSE Blythe 1, LLC	EG10–10–000
Ridgewind Power Partners, LLC.	EG10–11–000
Stetson Wind II, LLC	EG10–13–000
Buffalo Ridge II LLC	EG10–14–000
Elm Creek Wind II LLC	EG10–15–000
Cottonwood Energy Company LP.	EG10–16–000

Take notice that during the months of January and February, 2010, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5205 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

[Case No. RF–010]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Electrolux Home Products, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

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

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. RF–010) that grants to Electrolux Home Products, Inc. (Electrolux) a waiver from the DOE electric refrigerator and refrigerator-freezer test procedure for certain basic models containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's decision and order, Electrolux shall be required to test and rate its refrigerator-freezers with adaptive control anti-sweat heaters using an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective March 11, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611, E-mail: *AS_Waiver_Requests@ee.doe.gov.* Betsy Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Electrolux a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR Part 430 subpart B, appendix A1 for certain basic models of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters, provided that Electrolux tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Electrolux from making representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and such representation fairly discloses the results of such testing. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Issued in Washington, DC, on March 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Electrolux Home Products, Inc. (Case No. RF–010).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309)

Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Today's notice involves residential products under Part A. The test procedure for residential electric refrigerator-freezers relevant to the current petition for waiver is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products when (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On November 5, 2008, Electrolux filed a petition for waiver from the test procedures applicable to its product line of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters. The applicable test procedures are contained in 10 CFR part 430, subpart B, appendix A1–Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers. Because the existing test procedure under 10 CFR part 430 takes neither ambient humidity nor adaptive technology into account, it does not accurately measure the energy consumption of Electrolux's new refrigerator-freezers that feature humidity sensors and adaptive control anti-sweat heaters. Consequently, Electrolux has submitted an alternate test to DOE for approval to ensure that it is correctly calculating the energy consumption of this new product line. On June 4, 2009, DOE granted Electrolux an interim waiver and published Electrolux's petition for waiver. 74 FR 26853. DOE did not receive any comments on the Electrolux petition. DOE granted the Electrolux waiver on December 15, 2009. 74 FR 66338.

Assertions and Determinations

Electrolux's Petition for Waiver

On July 13, 2009, Electrolux informed DOE that after it filed its petition for waiver in November 2008 it developed additional basic models with adaptive anti-sweat heater technology. Electrolux asserted that these new products are identical in function and operation to the basic models listed in Electrolux's November 2008 petition with respect to the properties that made those products eligible for a waiver. Therefore, Electrolux requested that DOE add these models to the list of basic models for which the interim waiver was granted. In addition, Electrolux requested that DOE grant a new waiver for these additional basic models. Electrolux' July 13 petition was published in the **Federal Register** on December 15, 2009. 74 FR 66344. The December 15 **Federal Register** notice also modified the interim waiver by extending it to additional basic models. DOE did not receive any comments on the Electrolux petition.

Electrolux requested it be permitted to use the same alternate test procedure DOE prescribed for GE and Whirlpool refrigerators and refrigerator-freezers equipped with a similar technology. The alternate test procedure applicable to the GE and Whirlpool (and now Electrolux) products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the GE decision and order referenced above. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Electrolux petition for waiver. The FTC staff did not have any objections to granting a waiver to Electrolux.

Conclusion

After careful consideration of all the material that was submitted by Electrolux and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by Electrolux Home Products, Inc. (Case No. RF–010) is hereby granted as set forth in the paragraphs below.

(2) Electrolux shall not be required to test or rate the following Electrolux models on the basis of the current test procedures contained in 10 CFR Part 430, subpart B, appendix A1, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

EI28BS36IW	E128BS361B	EI28BS36IS	EI28BS51IW	EI28BS51IB
EI28BS51IS	E123BC361W	E123BC361B	E123BC361S	E123BC511W
E123BC511B	E123BC511S	E23BC581SS	E23BC58JPS	E23BC781SS
E23BC781PS	FGHB2844LP	FGHB2844LE	FGHB2844LM	FGHB2844LF
FGHB2846LM	FGHN2844LP	FGHN2844LE	FGHN2844LM	FGHN2844LF
FGHB2869LP	FGHB2869LE	FGHB2879LF	FGHN2869LP	FGHN2869LE
FGHN2879LF	FPHB2899LF	FPHN2899LF		

(3) Electrolux shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR Part 430, appendix A1, except that, for the Electrolux products listed in paragraph (2) only:

(A) The following definition is added at the end of Section 1:

1.13 Variable anti-sweat heater control means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 *Operational conditions.* The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be off during one test and on during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the result of the second test will be derived by performing the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3. is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the on position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to: $E_{ON} = E + (\text{Correction Factor})$

Where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the off position.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power = A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

Where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F. System-loss Factor = 1.3

(4) *Representations.* Electrolux may make representations about the energy use of its adaptive control anti-sweat heater refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–5228 Filed 3–10–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–790–000]

El Cajon Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 4, 2010.

This is a supplemental notice in the above-referenced proceeding of El Cajon Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 24, 2010.

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

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

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

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5206 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12829–001; Project No. 12861–001; Project No. 12921–001; Project No. 12930–001; Project No. 12938–001; Project No. 12915–001; Project No. 12912–001]

Notice of Dispute Resolution Panel Meeting and Technical Conference

March 4, 2010.

Free Flow Power Corporation.	Project No. 12829–001
FFP Project 28, LLC	Project No. 12861–001
FFP Project 32, LLC	Project No. 12921–001
FFP Project 41, LLC	Project No. 12930–001
FFP Project 42, LLC	Project No. 12938–001
FFP Project 54, LLC	Project No. 12915–001
FFP Project 57, LLC	Project No. 12912–001

On March 4, 2010, Commission staff, in response to the filing of a notice of study dispute by the U.S. Department of Interior, Fish and Wildlife Service, on February 12, 2010, convened a single three-person Dispute Resolution Panel (Panel) pursuant to 18 CFR 5.14(d).

The Panel will hold a technical conference at the time and place noted below. The technical conference will address a study dispute pertaining to five issues in the Fish Entrainment, Population Sampling, Habitat Use, and Movement Study. The issues in dispute are: (1) Species of fish to be used in controlled entrainment testing; (2) methodology for controlled testing of entrainment injury and mortality; (3) riverine fish movement, behavior, and habitat use; (4) fish population effects; and (5) entrainment effects on fish eggs and larvae, aquatic macroinvertebrates, and zooplankton.

The purpose of the technical session is for the disputing agencies, applicants, and Commission to provide the Panel with additional information necessary to evaluate the disputed study. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The Panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panel may, at their discretion, limit the speaking time for each participant.

Technical Conference

Date: Tuesday, March 16, 2010.

Time: 9 a.m.–5 p.m. (CST; GMT–6:00).

Place: Classroom/Meeting Room, Corps of Engineers National Great Rivers Museum, #2 Locks and Dam Way, Alton, Illinois.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5209 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[[Project No. 12690–003]

Public Utility District No. 1 of Snohomish County, WA; Notice of Technical Meeting To Discuss Information and Monitoring Needs for a License Application for a Pilot Project

March 4, 2010.

a. *Type of Application:* Draft License Application for Pilot Project.

b. *Project No.:* 12690–003.

c. *Applicant:* Public Utility District No. 1 of Snohomish County, Washington (Snohomish PUD).

d. *Name of Project:* Admiralty Inlet Pilot Tidal Project.

e. *Location:* On the east side of Admiralty Inlet in Puget Sound, Washington, about 1 kilometer west of Whidbey Island, entirely within Island County, Washington.

f. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

g. *Applicant Contact:* Steven J. Klein, Public Utility District of Snohomish County, Washington, P.O. Box 1107, 2320, California Street, Everett, WA 98206–1107; (425) 783–8473.

h. *FERC Contact:* David Turner (202) 502–6091; e-mail at david.turner@ferc.gov.

i. *Project Description:* The proposed Admiralty Inlet Pilot Tidal Project would consist of (1) Two 10-meter, 500-kilowatt (kW) Open-Centre Turbines supplied by OpenHydro Group Ltd., mounted on completely submerged gravity foundations; (2) two 250-meter service cables connected at a subsea junction box or spliced to a 0.5-kilometer subsea transmission cable, connecting to a cable termination vault about 50 meters from shore; (3) two 81-meter-long buried conduits containing the two DC transmission lines from the turbines and connecting to a power conditioning and control building; (4) a 140-meter long buried cable from the control building to the grid; and (5) appurtenant facilities for operation and maintenance. The estimated annual generation of the project is 383,000 kilowatt-hours.

j. *Meeting Purpose and Schedule:* On December 31, 2009, Snohomish PUD filed a Notice of Intent and request for waivers of certain regulations of the Federal Energy Regulatory Commission's (Commission) Integrated Licensing Process to expedite processing of a license application for the Admiralty Inlet Pilot Tidal Project.

Commission staff will hold a technical meeting to scope issues and to discuss information and monitoring needs for the license application. At the technical meeting, Commission staff will focus the discussion on the information gaps that need to be addressed to ensure that sufficient information exists for the Commission to make a determination on whether the proposed project meets the criteria for a pilot project and for processing a license application for a pilot project once it is filed with the Commission.

All interested individuals, organizations, and agencies are invited to attend the meeting. The time and location of the meeting is as follows: Monday, April 12, 2010, 8:30 a.m. (local time), PUD Electric Building Headquarters, 2320 California Street, Everett, Washington.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5207 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–73–000]

TGGT Holdings, LLC; Notice of Petition for Declaratory Order

March 4, 2010.

Take notice that on February 26, 2010, under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2009), TGGT Holdings, LLC (TGGT) filed a petition for a declaratory order requesting that the Commission declare TGGT's proposed expansion facilities

will be non-jurisdictional gathering facilities, and the completion of its proposed expansion facilities will not affect the non-jurisdictional gathering status of TGGT's existing facilities, because such facilities will perform a gathering function exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act.

Any person desiring to intervene in or protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time March 26, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5211 Filed 3–10–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9126–1]

Notice of Charter Renewal for the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Charter for the Environmental Protection Agency's Environmental Financial Advisory Board (EFAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The purpose of EFAB is to provide advice and recommendations to the Administrator of EPA on issues associated with environmental financing.

It is determined that EFAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Vanessa Bowie, Staff Director, Center for Environmental Finance, Ronald Reagan Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (Mailcode 2731R), Telephone (202) 564–5186, or *bowie.vanessa@epa.gov.*

Dated: February 24, 2010.

Joshua Baylson,

Associate Chief Financial Officer.

[FR Doc. 2010–5241 Filed 3–10–10; 8:45 am]

BILLING CODE P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Tuesday, March 9, 2010 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS:

Item No. 1 Revision of Eximbank's Environmental Procedures and Guidelines consistent with the Bank's Carbon Policy.

Item No. 2 Expanding Eligibility for Short Term Products.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Items No. 1 & 2 only.

FOR FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (202) 565–3957.

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2010–4943 Filed 3–10–10; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commissions for Extension Under Delegated Authority, Comments Requested

March 2, 2010

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 collections, 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; (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.
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DATES: Persons wishing to comment on this information collection should submit comments by May 10, 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 e–mail to Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), via e–mail to Cathy.Williams@fcc.gov and to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collections send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0594.

Title: Cost of Service Filing for Regulated Cable Services, FCC Form 1220.

Form Number: FCC Form 1220.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; State, Local, or Tribal Government.

Number of Respondents and Responses: 20 respondents; 10 responses.

Estimated Hours per Response: 4 – 80 hours.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure requirement.

Total Annual Burden: 1,220 hours

Total Annual Costs: $100,000

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 623 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Cable operators file FCC Form 1220 with their Local Franchising Authorities to demonstrate the costs of providing cable service in order to justify rates above levels determined under the Commission's benchmark methodology. The Commission uses Form 1220 to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under the Commission's rules.

OMB Control Number: 3060–0601.

Title: Setting Maximum Initiated Permitted Rates for Regulated Cable Services, FCC Form 1200.

Form Number: FCC Form 1200.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; State, Local, or Tribal Government.

Number of Respondents and Responses: 100 respondents; 50 responses.

Estimated Hours per Response: 2 – 10 hours.

Frequency of Response: One time and annual reporting requirements; Third party disclosure requirement.

Total Annual Burden: 800 hours.

Total Annual Costs: $62,500.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 4(i) and 623 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Cable operators and local franchise authorities file FCC Form 1200 to justify the reasonableness of rates in effect on or after May 15, 1994. The FCC uses the data to evaluate cable rates the first time they are reviewed on or after May 15, 1994, so that maximum permitted rates for regulated cable service can be determined.

OMB Control Number: 3060–1069.

Title: Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, NPRM, MB Docket No. 04–256, FCC 04–173.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 1,360 respondents; 1,360 responses.

Estimated Hour per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,360 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On July 13, 2004, the Commission adopted a Notice of Proposed Rule Making (NPRM), Attribution of Joint Sales Agreements in Local Television Markets, in MB Docket No. 04–256, FCC 04–173, which proposed to consider whether to amend its attribution rules to attribute certain joint sales agreements (JSAs) between broadcast TV stations located in the same local market. The Commission has not taken any action on this proposal since 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–5146 Filed 3–10–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

March 8, 2010.

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. 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 of further reduce the information collection 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 currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before April 12, 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 Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ”Currently Under Review”, (3) click on the downward–pointing arrow in the ”Select Agency” box below the ”Currently Under Review” heading, (4) select ”Federal Communications Commission” from the list of agencies presented in the ”Select Agency” box, (5) click the ”Submit” button to the right of the ”Select Agency” box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214, Judith–B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–1044.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 03–338 and WC Docket No. 04–313, FCC 04–290, Order on Remand.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit; not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 645 respondents; 645 responses.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. section 251 of the Telecommunications Act of 1996.

Total Annual Burden: 5,160 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit or disclose confidential information. However, in certain circumstances, respondents may voluntarily choose to submit confidential information pursuant to applicable Commission confidentiality rules.

Need and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period in order to obtain the full three year clearance from them. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. There is no change in the Commission's burden estimates.

Section 251 is designed to accelerate private sector and deployment of telecommunications technologies and services by spurring competition. In order to foster competition in the local telephone market, the Telecommunications Act of 1996 requires incumbent local exchange carriers (incumbent LECs) to share certain elements of their local telephone networks, providing them to other carriers at reasonable prices on an unbundled basis. These “unbundled network elements (UNEs)” are necessary for competition because the only alternative, building entire new telephone networks, would be prohibitively expensive for new entrants.

In Order FCC 03–36, the Commission adopted rules and regulation designed to eliminate operation barriers to competition in the telecommunications services market and implement certain provisions of section 251, including the UNE obligations of incumbent LECs.

In the Order on Remand, FCC 04–290, the Commission responded to a decision by the United States Court of Appeals for the District of Columbia that vacated the “sub–delegation” of authority to state commissions and vacated and remanded certain nationwide impairment findings, including mass market switching and dedicated transport.

The information collection requirements in this submission to the OMB is to implement the requirements of section 251 of the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–5150 Filed 3–10–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

March 8, 2010.

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. 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 collection burden on 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 currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before April 12, 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 Judith B. Herman, Federal Communications Commission (FCC). To submit your comments by e–mail send then to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ”Currently Under

Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214, Judith–B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0496.

Title: ARMIS Operating Data Report.

Report No.: FCC Report 43–08.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 55 respondents; 55 responses.

Estimated Time Per Response: 139 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. sections 11, 219(b) and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 7,645 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not requested in the ARMIS Operating Data Report. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, the respondent is instructed on the appropriate procedures to follow to safeguard sensitive data. Section 0.459 of the Commission's rules contains procedures for requesting confidential treatment of data. See 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period in order to obtain the full three year clearance from them. There is no change in the annual reporting requirement.

Section 220 of the Communications Act of 1934, as amended, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to this Act, including any accounts, records, and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys.

The Automated Reporting Management and Information System (ARMIS) was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The ARMIS Report 43–08 collects network operating data in a consistent format. The ARMIS Report 43–08 monitors network growth, usage and reliability.

In this submission to the OMB, the Commission is adjusting the number of carriers filing this ARMIS report from 56 to 55 to reflect the merger of two holding companies. The Commission, in its ARMIS Forbearance Order, noted that among other things, that the reporting carriers have committed to collecting and retaining all information/data internally that was previously reported but will not be reported during this OMB approval period on the ARMIS Report 43–08, for 24 months.

The information in the ARMIS Report 43–08 provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to receive, process and analyze the extensive amounts of data that are needed to administer the rules. ARMIS facilitates the timely and efficient analysis of revenue requirements, rate of return and price caps, and provides an improved basis for auditing and oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–5173 Filed 3–10–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

DATE AND TIME: Thursday, March 11, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2010–02: West Virginia Republican Party, Inc. by its chairman, Douglas E. McKinney, M.D.

EMILY's List: Final Rules and Explanation & Justification.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodation, should contact Darlene Harris, Acting Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 2010–5037 Filed 3–10–10; 8:45 am]

BILLING CODE 6715–01–M

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 April 5, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Evergreen Bancorporation, Evergreen, Colorado, to acquire up to 100 percent of the voting shares of Clear Creek National Bank, Georgetown, Colorado.

Board of Governors of the Federal Reserve System, March 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–5232 Filed 3–10–10; 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 March 26, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Bryn Mawr Bank Corporation, Bryn Mawr, Pennsylvania; to retain ownership of The Bryn Mawr Trust Company of Delaware, Wilmington, Delaware, and thereby engage in operating a nondepository trust company, pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–5231 Filed 3–10–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET Date	Trans. No.	ET req. status	Party name
02–FEB–10	20100338	G	The Kroger Co.
		G	The Little Clinic LLC
		G	The Little Clinic LLC
	20100353	G	Merz GmbH & Co. KGaA
		G	BioForm Medical, Inc.
		G	BioForm Medical, Inc.
	20100364	G	Hillenbrand, Inc.
		G	K-Tron International, Inc.
		G	K-Tron International, Inc.
03–FEB–10	20100315	G	Gianni Chiarva
		G	Tangent Rail Corporation
		G	Tangent Rail Corporation
	20100316	G	Giorgio Chiarva
		G	Tangent Rail Corporation
		G	Tangent Rail Corporation
04–FEB–10	20100365	G	CCMP Capital Investors II, L.P.
		G	Francesca's Holdings Corporation
		G	Francesca's Holdings Corporation
05–FEB–10	20100269	G	Grupo Proeza S.A. de C.V.
		G	Dana Holding Corporation
		G	Dana Holding Corporation
	20100373	G	Trustmark Mutual Holding Company
		G	Health Fitness Corporation
		G	Health Fitness Corporation

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans. No.	ET req. status	Party name
	20100379	G	Shiseido Company, Limited
		G	Bare Escentuals, Inc.
		G	Bare Escentuals, Inc.
	20100385	G	Martek Biosciences Corporation
		G	Charterhouse Equity Partners IV, L.P.
		G	Charter Amerifit LLC
17–FEB–10	20090650	G	Microsoft Corporation
		G	Yahoo! Inc.
		G	Yahoo! Inc.
19–FEB–10	20100380	G	Ares Corporate Opportunities Fund III, L.P.
		G	LyondellBasell Industries N.V.
		G	LyondellBasell Industries N.V.
	20100383	G	LeverageSource, L.P.
		G	LyondellBasell Industries N.V.
		G	LyondellBasell Industries N.V.
	20100411	G	Electricite de France S.A.
		G	Constellation Energy Group, Inc.
		G	Safe Harbor Water Power Corporation
		G	CER Generation II, LLC
		G	Panther Creek Partners
		G	ACE Cogeneration Company
		G	Constellation Power Source Generation, Inc.
		G	Handsome Lake Energy LLC
		G	Sunnyside Cogeneration Associates
		G	Inter-Power/Ahlcon Partners L.P.
22–FEB–10	20100381	G	International Business Machines Corp.
		G	NISC Holdings, LLC
		G	National Interest Security Company LLC
		G	Technology and Management Services, Inc.
	20100386	G	Ipsos S.A.
		G	Pilot Group LP
		G	OTX Corporation
	20100396	G	Jeffrey Vinik
		G	Lightning Investment Holdings L.P.
		G	Lightning Properties, Ltd.
		G	Palace Florida Properties L.P.
		G	Lightning Hockey GP LLC
		G	Tampa Bay Arena, L.P.
		G	Lightning Hockey LP
		G	Lightning Real Estate Investment GP LLC
	20100398	G	Roark Capital Partners II, LP
		G	Mr. Robert Baggett
		G	Peachtree Business Products, Inc.
	20100399	G	AREVA SA
		G	Ausra, Inc.
		G	Ausra, Inc.
	20100400	G	Carl C. Icahn
		G	Regeneron Pharmaceuticals, Inc.
		G	Regeneron Pharmaceuticals, Inc.
	20100403	G	Chuck Greenberg
		G	Thomas O. Hicks
		G	Texas Rangers Baseball Partners
		G	Rangers Ballpark LLC
		G	Emerald Diamond, L.P.
		G	Ballpark Real Estate, L.P.
23–FEB–10	20100369	G	HealthpointCapital Partners, L.P.
		G	Alphatec Holdings, Inc.
		G	Alphatec Holdings, Inc.
	20100374	G	Thermo Fisher Scientific Inc.
		G	Ahura Scientific Inc.
		G	Ahura Scientific Inc.
	20100392	G	America Movil, S.A.B. de C.V.
		G	Carso Global Telecom, S.A.B. de C.V.
		G	Carso Global Telecom, S.A.B. de C.V.
	20100394	G	Energy Transfer Equity, L.P.
		G	Energy Spectrum Partners V LP
		G	TSM Treating, LLC
		G	Tristate North Louisiana Midstream, LLC
	20100397	G	IBM Corporation
		G	Initiate Systems, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET Date	Trans. No.	ET req. status	Party name
		G	Initiate Systems, Inc.
25–FEB–10	20100406	G	Samsung Electronics Co., Ltd.
		G	Samsung Digital Imaging Co., Ltd.
		G	Samsung Digital Imaging Co., Ltd.
	20100412	G	GTCR Fund IX/A, L.P.
		G	ATI Holdings, Inc.
		G	ATI Holdings, Inc.
	20100418	G	PepsiCo, Inc.
		G	PepsiAmericas, Inc.
		G	PepsiAmericas, Inc.
	20100419	G	PepsiCo, Inc.
		G	The Pepsi Bottling Group, Inc.
		G	The Pepsi Bottling Group, Inc.
26–FEB–10	20100420	G	S.A.C. Private Equity Investors, L.P.
		G	Spheris Holding II, Inc. a debtor-in-possession
		G	Spheris Leasing LLC
		G	Spheris Canada Inc.
		G	Spheris Holding II, Inc., a debtor-in-possession
		G	Spheris Operations LLC
		G	Vianeta Communications

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative Or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–5172 Filed 3–10–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Development and Evaluation of AIIRQ's Quality Indicators Improvement Toolkit." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on December 31st, 2009 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by April 12, 2010.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Development and Evaluation of AHRQ's Quality Indicators Improvement Toolkit

An important part of AHRQ's mission is to disseminate information and tools that can support improvement in quality and safety in the U.S. health care community. See 42 U.S.C. 299(b)(1)(F); 299a(a)(1) and (2). This proposed information collection supports that part of AHRQ's mission by developing and evaluating a toolkit that will enable hospitals to effectively use AHRQ's Quality Indicators (QIs).

AHRQ has developed sets of QIs that can be used by the Agency and others to document quality and safety conditions at U.S. hospitals. Two sets of QIs will be used in this proposed toolkit: the Inpatient Quality Indicators (IQIs) and the Patient Safety Indicators (PSIs). The IQIs contain measures of volume, mortality, and utilization for common medical conditions and major surgical procedures. The PSIs are a set of measures to screen for potentially preventable adverse events that patients may experience during hospitalization. These QIs have been previously developed and evaluated by AHRQ, and are in use at a number of hospitals throughout the country. The QIs and supportive documentation on how to work with them are posted on AHRQ's Web site at *http://www.qualityindicators.ahrg.gov.* Many of the QIs have been endorsed by the National Quality Forum through its consensus review process.

Values for each QI can be estimated for a given hospital by applying computations in SAS programs developed by AHRQ to the hospital's pre-existing inpatient encounter data. To identify potential areas for improving the quality and safety of the care that a hospital provides, the hospital can use these data to examine its current performance on each QI measure, changes in its performance over time, and how its performance compares to that of other hospitals. However, despite the availability of the QIs as tools to help hospitals assess their performance, many U.S. hospitals

have limited experience with the use of such measurement tools, or in using quality improvement methods to improve their performance as assessed by these measures.

An alpha version of the Quality Indicators Improvement Toolkit will be developed, which then will be field tested by six hospitals. During the field test, the proposed evaluation will assess the usability of the Toolkit for hospitals, and it will examine their experiences in implementing interventions to improve their performance on the AHRQ QIs, as well as effects on trends in the hospitals' AHRQ QI values. Using results from the evaluation, the alpha Toolkit will be revised to yield a final Toolkit that will be effective in supporting hospitals' quality improvement efforts.

The development and evaluation of the Quality Indicators Improvement Toolkit will be conducted by AHRQ's contractor, the RAND Corporation, under contract number HHSA290200600017I. RAND has subcontracted with the University HealthSystem Consortium (UHC) to partner in the development of the Toolkit and field testing of it with hospitals as they use the Toolkit in carrying out initiatives designed to improve performance on the QIs.

Method of Collection

Case study research methods will be used for this qualitative study. The following four data collection instruments will be used in the evaluation:

(1) *Pre/post-test interview protocol*—Consisting of both open- and closed-ended questions will be administered prior to implementation of the Toolkit and again post implementation. The purpose of this data collection is to obtain data on the steps the hospitals took to implement actions to improve performance on the QIs; their plans for making process changes; and their experiences in achieving changes and perceptions regarding lessons learned that could be shared with other hospitals.

(2) *Update protocol*—Consisting of both open- and closed-ended questions will be administered three times during the study (quarterly during the implementation year). The purpose of this data collection is to capture longitudinal data regarding hospitals' progress in implementing changes, successes and challenges, and plans for subsequent actions. These data will include descriptive information on changes over time in the hospitals' implementation actions and how they are using the Toolkit, as well as experiential information on the perceptions of participants regarding the improvement implementation process and its effects. It also ensures the collection of information close to pertinent events, which avoids the recall bias associated with retrospective reporting of experiences.

(3) *Usability testing protocol*—Also consisting of both open and closed ended questions will be administered once at the end of the evaluation period. The purpose of this data collection is to gather information from the hospitals on how they used each tool in the Toolkit, the ease of use of each tool, which tools were most helpful, suggested changes to improve each tool, and suggestions for other tools to add to the Toolkit. This information will be used in the revisions of the Toolkit following the end of the field test.

(4) *AHRQ QI data collection tool*—Used to collect the IQI and PSI measures calculated by the hospitals both prior to implementation of the Toolkit and again post implementation. The purpose of this data collection is to determine if the hospitals' implementation actions, including use of the toolkit, had a measurable impact on the QI measures.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this information collection. Three protocols will be used to collect data from respondents in interviews that will take one hour each. The pre/post-test interview protocol will be administered twice—at the beginning and end of the field-test year. The pre- test interviews will be performed as one-hour group interviews conducted with the six hospitals' implementation teams at the start of the year. At the end of the year, post-test interviews will be performed as one-hour group interviews with three of the hospitals and during site visits with the other three hospitals. At each site visit, data will be collected through one-hour interviews with the hospital's implementation team as well as through other group interviews performed separately with each of the key stakeholder groups—physicians, nurses, clerks, and others. The additional data from the stakeholder groups will allow triangulation of variations in perceptions and experiences among different groups, of which the implementation teams might not be aware.

The quarterly update protocol will be administered quarterly to 2 hospital staff members from each hospital during the year (in months 3, 6, and 9). The usability testing protocol will be administered to 4 staff members once at the end of the evaluation period. The AHRQ QI data collection tool will be used both pre- and post-implementation to collect the QI measures. The total burden is estimated to be 360 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in the evaluation. The total cost burden is estimated to be $9,886.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of hospitals	Number of responses per hospital	Hours per response	Total burden hours
Pre/Post-Test Interview Protocol	6	26	1	156
Quarterly Update Protocol	6	6	1	36
Usability Testing Protocol	6	4	1	24
AHRQ QI Data Collection Tool	6	2	*12	144
Total	24	NA	NA	360

* Includes time to program and run the computer programs necessary to produce the measures.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN FOR HOSPITALS

Form name	Number of hospitals	Total burden hours	Average hourly wage rate*	Total cost burden
Pre/Post-Interview Protocol	6	156	$27.46	$4,284
Quarterly Update Protocol	6	36	27.46	989
Usability Testing Protocol	6	24	27.46	659
AHRQ QI Data Collection Tool	6	144	27.46	3,954
Total	24	360	NA	9,886

*Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States, March 2009, "U.S. Department of Labor, Bureau of Labor Statistics." Used as an overall average wage rate across the various types of staff involved in the quality improvements.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost of this project to the government. The estimated total cost for the evaluation work is $209,827 over the two-year year project, with an annualized total cost of $104,914. These costs were developed based on estimates of staff days required, to which administrative expenses are applied, and based on airfare, hotel, and per diem costs for staff travel for the site visits at the end of the evaluation.

EXHIBIT 3—ESTIMATED COST OF THE EVALUATION

Cost component	Total cost	Annualized cost
Protocol Development	$40,278	$20,139
Data Collection Activities	91,104	45,552
Data Analysis	45,252	22,626
Publication of Results	24,370	12,185
Travel for Site Visits	8,823	4,412
Total	209,827	104,914

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 24, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–4948 Filed 3–10–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0121]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mammography Quality Standards Act Requirements

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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the estimated reporting and recordkeeping burden associated with the Mammography Quality Standards Act requirements.

DATES: Submit written or electronic comments on the collection of information by May 10, 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: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: 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 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, 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.

The Mammography Quality Standards Act Requirements—21 CFR Part 900 (OMB Control Number 0910–0309)—Extension

The Mammography Quality Standards Act requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation and certification bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level.

Under the regulations, as a first step in becoming certified, mammography facilities must become accredited by an FDA-approved accreditation body. This requires undergoing a review of their clinical images and providing the accreditation body with information showing that they meet the equipment, personnel, quality assurance and quality control standards, and have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer compliant mechanism. On the basis of this accreditation, facilities are then certified by FDA or an FDA-approved State certification agency and must prominently display their certificate. These actions are taken to ensure safe, accurate, and reliable mammography on a nationwide basis.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.3(b)(1)	0.33	1	0.33	1	0.33		
900.3(b)(3) full[1]	0.33	1	0.33	320	106	10,000	
900.3(b)(3) limited[2]	5	1	5	30	150		
900.3(d)(2)	0.1	1	0.1	30	3		
900.3(d)(5)	0.1	1	0.1	30	3		
900.3(e)	0.1	1	0.1	1	0.1		
900.3(f)(2)	0.1	1	0.1	200	20		$45
900.4(c)	2,894	1	2,894	1.5	4,341		
900.11(b)(1)							
900.11(b)(2) facility[3]							
900.4(c) AB[4]	5	1	5	421	2,105		$173,620
900.4(d)	2,894	1	2,894	.75	2,171		
900.11(b)(1)							
900.11(b)(2) facility[3]							
900.4(d) AB[4]	5	1	5	211	1,055		
900.4(e)	8,681	1	8,681	1	8,681		$8,681
900.11(b)(1)							
900.11(b)(2) facility[3]							

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.4(e) AB[4]	5	1	5	1,736	8,680		
900.4(f)	331	1	331	7	2,317		$77,640
900.4(h) facility[3]	8,681	1	8,681	1	8,681		$3,820
900.4(h) AB[4]	5	1	5	10	50		
900.4(i)(2)	1	1	1	16	16		
900.6(c)(1)	0.1	1	0.1	60	6		
900.11(b)(3)	5	1	5	.5	2.5		
900.11(c)	400	1	400	5	2,000		
900.12(c)(2)	8,681	4,942	42,901,502	.0833333	3,575,124		$19,500,000
900.12(c)(2) patient refusal[5]	87	1	87	.5	43.5		
900.12(h)(4)	7	1	7	1	7		
900.12(j)(1) facility[3]	8	1	8	200	1,600		$120
900.12(j)(1) AB[4]	8	1	8	320	2,560		$240
900.12(j)(2)	2	1	2	100	200		$3,875
900.15(c)	5	1	5	2	10		
900.15(d)(3)(ii)	1	1	1	2	2		
900.18(c)	2	1	2	2	4		
900.18(e)	2	1	2	1	2		
900.21(b)	0.33	1	0.33	320	106	$30,000	$174
900.21(c)(2)	0.1	1	0.1	30	3		
900.22(h)	5	200	1,000	.083	83		20
900.22(i)	2	1	2	30	60		
900.23	5	1	5	20	100		
900.24(a)	0.4	1	0.4	200	80		$42
900.24(a)(2)	0.15	1	0.15	100	15		$21
900.24(b)	1	1	1	30	30		
900.24(b)(1)	0.3	1	0.3	200	60		$42
900.24(b)(3)	0.15	1	0.15	100	15		$21
900.25(a)	0.2	1	0.2	16	3.2		
FDA Form 3422	700	1	700	.25	175		
Total					3,620,673	$40,000	$19,768,361

[1] One-time burden.
[2] Refers to accreditation bodies applying to accredit specific Full Field Digital Mammography units.
[3] Refers to the facility component of the burden for this requirement.
[4] Refers to the accreditation body component of the burden for this requirement.
[5] Refers to the situation where a patient specifically does not want to receive the lay summary of her exam.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
900.3(f)(1)	0.1	1	0.1	0	0		
900.4(g)	5	1	5	1	5		
900.12(a)(1)(i)(B)(*2*)	87	1	87	8	696		
900.12(a)(4)	8,681	4	34,724	1	34,724		
900.12(c)(4)	8,681	1	8,681	1	8,681	$28,000	
900.12(e)(13)	8,681	52	451,412	.083333	37,618		
900.12(f)	8,681	1	8,681	16	138,896		
900.12(h)(2)	8,681	2	17,362	1	17,362		
900.22(a)	5	1	5	1	5		
900.22(d)	5	1	5	1	5		
900.22(e)	5	1	5	1	5		
900.22(f)	3	1	3	1	3		
900.22(g)	5	1	5	1	5		$50
900.25(b)	5	1	5	1	5		
Total					238,010	$28,000	$50

The following sections of title 21 of the Code of Federal Regulations (CFR) were not included in the previously mentioned burden tables because they were considered usual and customary practice and were part of the standard of care prior to the implementation of the regulations. Therefore, they resulted in no additional reporting or recordkeeping burden: 21 CFR 900.12(c)(1) and (c)(3) and 21 CFR 900.3(f)(1).

Section 900.3(c) was not included in the previously mentioned burden tables because all four existing accreditation bodies are approved until late in 2013; so, no applicants will reapply during the requested information collection period. Section 900.24(c) was also not included in the previously mentioned burden tables because if a certifying state had its approval withdrawn, FDA would take over certifying authority for the affected facilities. Because FDA already has all the certifying state's electronic records, there wouldn't be an additional reporting burden.

Dated: March 8, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5230 Filed 3–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0101]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Form FDA 3356; Eligibility Determination for Donors; and Current Good Tissue Practice

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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements for FDA regulations related to human cells, tissues, and cellular and tissue-based products (HCT/Ps) involving establishment registration and listing using Form FDA 3356; eligibility determination for donors; and current good tissue practice (CGTP).

DATES: Submit written or electronic comments on the collection of information by May 10, 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: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792.

SUPPLEMENTARY INFORMATION: 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 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, 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.

Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Form FDA 3356; Eligibility Determination for Donors; and Current Good Tissue Practice—(OMB Control Number 0910–0543)—Extension

Under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States. As derivatives of the human body, all HCT/Ps pose some risk of carrying pathogens that could potentially infect recipients or handlers. FDA has issued regulations related to HCT/Ps involving establishment registration and listing using Form FDA 3356, eligibility determination for donors, and CGTP.

A. Establishment Registration and Listing; Form FDA 3356

The regulations in part 1271 (21 CFR part 1271) require domestic and foreign establishments that recover, process, store, label, package, or distribute an HCT/P described in § 1271.10(a), or that perform screening or testing of the cell or tissue donor to register with FDA (§ 1271.10(b)(1)) and submit a list of each HCT/P manufactured (§ 1271.10(b)). Section 1271.21(a) requires an establishment to follow certain procedures for initial registration and listing of HCT/Ps, and § 1271.25(a) and (b) identifies the required initial registration and HCT/P listing information. Section 1271.21(b), in brief, requires an annual update of the establishment registration. Section 1271.21(c)(ii) requires establishments to submit HCT/P listing updates when an HCT/P is changed as described in § 1271.25(c). Section 1271.25(c) identifies the required HCT/P listing update information. Section 1271.26 requires establishments to submit an amendment if ownership or location of the establishment changes. FDA requires the use of a registration and listing form (Form FDA 3356: Establishment Registration and Listing for Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)) to submit the required information (§§ 1271.10, 1271.21, 1271.25, and 1271.26). To further facilitate the ease and speed of submissions, electronic submission is accepted (*http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/TissueEstablishmentRegistration/default.htm*).

B. Eligibility Determination for Donors

In brief, FDA requires certain HCT/P establishments described in § 1271.1(b) to determine donor eligibility based on donor screening and testing for relevant communicable diseases agents and diseases, except as provided under § 1271.90. The documented determination of a donor's eligibility is made by a responsible person defined in § 1271.3(t) and is based on the results of required donor screening, which includes a donor medical history interview (defined in § 1271.3(n)) and testing (§ 1271.50(a)). Certain records must accompany an HCT/P once the donor-eligibility determination has been made (§ 1271.55(a)). This requirement applies both to an HCT/P from a donor who is determined to be eligible as well as to an HCT/P from a donor who is determined to be ineligible or where the donor-eligibility determination is not complete if there is a documented urgent medical need (§ 1271.60). Once the donor-eligibility determination has been made, the HCT/P must be accompanied by a summary of records used to make the donor-eligibility determination (§ 1271.55(b)) and a statement whether, based on the results of the screening and testing, the donor is determined to be eligible or ineligible (§ 1271.55(a)(2)).

Records used in determining the eligibility of a donor, i.e., results and interpretations of testing for relevant communicable disease agents, the donor-eligibility determination, the name and address of the testing laboratory or laboratories, and the name of the responsible person (defined in § 1271.3(t)) who made the donor-eligibility determination and the date of the determination, must be maintained (§ 1271.55(d)(1)). If any information on the donor is not in English, the original record must be retained and translated to English and accompanied by a statement of authenticity from the translator (§ 1271.55(d)(2)). HCT/P establishments must retain the records pertaining to HCT/Ps at least 10 years after the date of administration, distribution, disposition, or expiration, whichever is latest (§ 1271.55(d)(4)).

When a product is shipped in quarantine as defined in § 1271.3(q), before completion of screening and testing, the HCT/P must be accompanied by records identifying the donor; stating that the donor-eligibility determination has not been completed; and stating that the product must not be used until the donor-eligibility determination has been completed (§ 1271.60(c)). When an HCT/P is used in cases of documented urgent medical need, the results of any completed donor screening and testing, and a list of any required screening and testing not yet completed also must accompany the HCT/P (§ 1271.60(d)(2)). When an HCT/P is used in cases of urgent medical need or from a donor who has been determined to be ineligible (as permitted under § 1271.65), documentation by the HCT/P establishment is required showing that the recipient's physician received notification that the testing and screening were not complete (in cases of urgent medical need), and upon the completion of the donor-eligibility determination, of the results of the determination (§ 1271.60(d)(3) and (d)(4) and § 1271.65(b)(3)).

An HCT/P establishment is also required to establish and maintain procedures for all steps that are performed in determining eligibility (§ 1271.47(a)), including the use of a product from a donor testing reactive for cytomegalovirus (§ 1271.85(b)(2)). The HCT/P establishment must record any departure from the procedures (§ 1271.47(d)).

C. Current Good Tissue Practice (CGTP)

FDA requires certain HCT/P establishments to follow CGTP

(§ 1271.1(b)). Section 1271.155(a) permits the submission of a request for FDA approval of an exemption from or alternative to any requirement in subpart C or D of part 1271. Section 1271.290(c) requires such establishments to affix a distinct identification code to each HCT/P that it manufactures that relates the HCT/P to the donor and to all records pertaining to the HCT/P. Whenever an establishment distributes an HCT/P to a consignee, § 1271.290(f) requires the establishment to inform the consignee, in writing, of the product tracking requirements and the methods the establishment uses to fulfill the requirements. Non-reproductive HCT/P establishments described in § 1271.10 are required under §§ 1271.350(a)(1) and (a)(3) to investigate and report to FDA adverse reactions (defined in § 1271.3(y)) using Form FDA–3500A (§ 1271.350(a)(2)). Form FDA–3500A is approved under OMB Control No. 0910–0291. Section 1271.370(b) and (c) requires establishments to include specific information either on the HCT/P label or with the HCT/P.

The standard operating procedures (SOP) provisions under part 1271 include the following: (1) Section 1271.160(b)(2) (receiving, investigation, evaluating, and documenting information relating to core CGTP requirements, including complaints, and for sharing information with consignees and other establishments); (2) § 1271.180(a) (to meet core CGTP requirements for all steps performed in the manufacture of HCT/Ps); (3) § 1271.190(d)(1) (facility cleaning and sanitization); (4) § 1271.200(b) (cleaning, sanitizing, and maintenance of equipment); (5) § 1271.200(c) (calibration of equipment); (6) § 1271.230(a) and (c) (validation of changes to a process); (7) § 1271.250(a) (controls for labeling HCT/Ps); (8) § 1271.265(e) (receipt, predistribution shipment, availability for distribution, and packaging and shipping of HCT/Ps); (9) § 1271.265(f) (suitable for return to inventory); (10) § 1271.270(b) (records management system); (11) § 1271.290(b)(1) (system of HCT/P tracking); and (12) § 1271.320(a) (review, evaluation, and documentation of complaints (as defined in § 1271.3(aa))).

Section 1271.155(f) requires an establishment operating under the terms of an exemption or alternative to maintain documentation of the terms and date of FDA approval. Section 1271.160(b)(3) requires documentation of appropriate corrective actions taken as a result of an audit of the quality program. Section 1271.160(b)(6) requires documentation of HCT/P deviations. Section 1271.160(d) requires documentation of computer validation or verification activities and results when computers are used to comply with the core CGTP requirements for its intended use. Section 1271.190(d)(2) requires documentation of all facility cleaning and sanitation activities performed to prevent contamination of HCT/Ps. Section 1271.195(d) requires documentation of environmental control and monitoring activities. Section 1271.200(e) requires documentation of equipment maintenance, cleaning, sanitizing, calibration, and other activities. Section 1271.210(d) requires documentation of the receipt, verification, and use of each supply or reagent. Section 1271.230(a) requires documentation of validation activities when the results of a process cannot be fully verified by subsequent inspection and tests. Section 1271.230(c) requires documentation of the review and evaluation of a process and revalidation of the process, if necessary, when any changes to a validated process occur. Section 1271.260(d) and (e) requires documentation of any corrective action taken when proper storage conditions are not met and documentation of storage temperatures for HCT/Ps. Section 1271.265(c)(1) requires documentation that release criteria have been met before distribution of an HCT/P. Section 1271.265(c)(3) requires documentation of any departure from a procedure at the time of its occurrence. Section 1271.265(e) requires documentation of the receipt, predistribution shipment, distribution, and packaging and shipping of HCT/Ps. Section 1271.270(a) requires documentation of each step in manufacturing required in part 1271, subparts C and D. Section 1271.270(e) requires documentation of the name and address, and a list of responsibilities of any establishment that performs a manufacturing step for an establishment. Sections 1271.290(d) and (e) require documentation of a method for recording the distinct identification code and type of each HCT/P distributed to a consignee to enable tracking from the consignee to the donor and to enable tracking from the donor to the consignee or final disposition. Section 1271.320(b) requires an establishment to maintain a record of each complaint that it receives, that contains relevant information for proper review and evaluation.

Respondents to this information collection are establishments that recover, process, store, label, package, or distribute any HCT/P, or perform donor screening or testing. The estimates provided below are based on the most recent available information from FDA's database system and trade organizations. The hours per response and hours per record are based on data provided by the Eastern Research Group, or FDA experience with similar recordkeeping or reporting requirements.

There are an estimated 2,281 HCT/P establishments (conventional tissue, eye tissue, peripheral blood stem cell, stem cell products from cord blood, reproductive tissue, and sperm banks), including 692 manufacturers of HCT/P products regulated under the Federal Food, Drug, and Cosmetics Act and section 351 of the PHS Act (42 U.S.C. 262), that have registered and listed with FDA. In addition, we estimate that 251 new establishments have registered with FDA (§ 1271.10(b)(1) and (b)(2) and § 1271.25(a) and (b)). There are an estimated 2,230 listing updates (§§ 1271.10(b)(2), 1271.21(c)(ii), and 1271.25(c)) and 565 location/ownership amendments (§ 1271.26).

Under § 1271.55(a), an estimated total of 2,167,396 HCT/Ps (which include conventional tissues, eye tissues, hematopoetic stem cells/progenitor cells, and reproductive cells and tissues) and an estimated total of 2,026,024 non-reproductive cells and tissues (total HCT/Ps minus reproductive cells and tissues) are distributed per year by an estimated 1,589 establishments (2,281 - 692 = 1,589 establishments with approved applications).

Under § 1271.60(c) and (d)(2), FDA estimates that 1,375 establishments shipped an estimated 286,000 HCT/Ps under quarantine, and that an estimated 18 establishments requested an exemption from or alternative to any requirement under part 1271, subpart C or D, specifically under § 1271.155(a).

Under § 1271.290(c) and § 1271.370(b) and (c), an estimated 1,694 non-reproductive HCT/P establishments label each of their 2,026,024 HCT/Ps with certain information. These establishments are also required to inform their consignees in writing of the requirements for tracking and of their established tracking system under § 1271.290(f).

FDA estimates 38 HCT/P establishments submitted 76 adverse reaction reports involving a communicable disease (§ 1271.350(a)(1)).

FDA estimates that 251 new establishments will create SOPs, and that 2,281 establishments will review and revise existing SOPs annually.

FDA estimates that 1,141 HCT/P establishments (2,281 x 50% = 1,141)

and 847 non-reproductive HCT/P establishments (1,694 x 50% = 847) record and justify a departure from the procedures (§§ 1271.47(d) and 1271.265(c)(3)).

Under § 1271.50(a), HCT/P establishments are required to have a documented medical history interview about the donor's medical history and relevant social behavior as part of the donor's relevant medical records for each of the estimated total of 91,240 donors (which include conventional tissue donors, eye tissue donors, peripheral and cord blood stem cell donors, and reproductive cell and tissue donors), and the estimated total of 86,394 non-reproductive cells and tissue donors (total donors minus reproductive cell and tissue donors).

FDA estimates that 684 HCT/P establishments (2,281 x 30% = 684) document an urgent medical need for an HCT/P and notify the physician using the HCT/P (§ 1271.60(d)(3) and (d)(4) and § 1271.65(b)(3)(iii)).

FDA also estimates that 1,824 HCT/P establishments (2,281 x 80% = 1,824) have to maintain records for an average of 2 contract establishments that perform a manufacturing process step for them (§ 1271.270(e)) and 1,141 HCT/P establishments maintain an average of 5 complaint records annually (§ 1271.320(b)).

In some cases, the estimated burden may appear to be lower or higher than the burden experienced by individual establishments. The estimated burden in these charts is an estimated average burden, taking into account the range of impact each regulation may have.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1271.10(b)(1) and 1271.21(b)[2]	2,281	1	2,281	.5	1,141
1271.10(b)(1) and (b)(2), 1271.21(a), and 1271.25(a) and (b)[2]	251	1	251	.75	188
1271.10(b)(2), 1271.21(c)(2)(ii), and 1271.25(c)[2]	2,230	1	2,230	.5	1,115
1271.26[2]	565	1	565	.25	141
1271.55(a)	1,589	1,364	2,167,396	.5	1,083,698
1271.60(c) and (d)(2)	1,375	208	286,000	.5	143,000
1271.155(a)	18	1	18	3	54
1271.290(c)	1,694	1,196	2,026,024	.083	168,835
1271.290(f)	1,694	1	1,694	1	1,694
1271.350(a)(1) and (a)(3)	38	2	76	1	76
1271.370(b) and (c)	1,694	1,196	2,026,024	.25	506,506
Total					1,906,448

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Using Form FDA 3356.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
New SOPs[2]	251	1	251	48	12,048
SOP Update[2]	2,281	1	2,281	24	54,744
1271.47(d)	1,141	1	1,141	1	1,141
1271.50(a)	2,281	40	91,240	5	456,200
1271.55(d)(1)	2,281	40	91,240	1	91,240
1271.55(d)(2)	2,281	1	2,281	1	2,281
1271.55(d)(4)	2,281	1	2,281	120	273,720
1271.60(d)(3) and (d)(4), and 1271.65(b)(3)(iii)	684	1	684	2	1,368
1271.155(f)	18	1	18	.25	5

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
1271.160(b)(3) and (b)(6)	1,694	12	20,328	1	20,328
1271.160(d)	1,694	12	20,328	1	20,328
1271.190(d)(2)	1,694	12	20,328	1	20,328
1271.195(d)	1,694	12	20,328	1	20,328
1271.200(e)	1,694	12	20,328	1	20,328
1271.210(d)	1,694	12	20,328	1	20,328
1271.230(a)	1,694	12	20,328	1	20,328
1271.230(c)	1,694	1	1,694	1	1,694
1271.260(d)	1,694	12	20,328	.25	5,082
1271.260(e)	1,694	365	618,310	.083	51,526
1271.265(c)(1)	1,694	1,196	2,026,024	.083	168,835
1271.265(c)(3)	847	1	847	1	847
1271.265(e)	1,694	1,196	2,026,024	.083	168,835
1271.270(a)	1,694	1,196	2,026,024	.25	506,506
1271.270(e)	1,824	2	3,648	.5	1,824
1271.290(d) and (e)	1,694	51	86,394	.25	21,599
1271.320(b)	1,141	5	5,705	1	5,705
Total					1,967,496

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Sections 1271.47(a), 1271.85(b)(2), 1271.160(b)(2) and (d)(1), 1271.180(a), 1271.190(d)(1), 1271.200(b), 1271.200(c), 1271.230(a), 1271.250(a), and 1271.265(e).

Dated: March 8, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5229 Filed 3–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0109]

Determination That PRO–BANTHINE (Propantheline Bromide) Tablets and 14 Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the 15 drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, a drug is withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicant, FDA withdrew approval of NDA 12–097 for KENALOG IN ORABASE (triamcinolone acetonide) Dental Paste in the **Federal Register** of February 11, 2009 (74 FR 6896).)

Application No.	Drug	Applicant
NDA 8–732	PRO–BANTHINE (propantheline bromide) Tablets, 7.5 milligrams (mg) and 15 mg	Shire Pharmaceuticals, Inc.,725 Chesterbrook Blvd., Wayne, PA 19087)
NDA 12–097	KENALOG IN ORABASE (triamcinolone acetonide) Dental Paste, 0.1%	Apothecon, Inc., c/o Bristol-Myers Squibb, P.O. Box 4500, Princeton, NJ 08543–4500
NDA 12–141	CYTOXAN (cyclophosphamide) Tablets, 25 mg and 50 mg	Baxter Healthcare Corp., 1620 Waukegan Rd. MPGR–AL, McGaw Park, IL 60085
NDA 17–498	MICRONASE (glyburide) Tablets, 1.25 mg, 2.5 mg, and 5 mg	Pharmacia and Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49001
NDA 17–924	TAGAMET (cimetidine HCl) Oral Solution, Equivalent to (EQ) 300 mg base/5 mL	GlaxoSmithKline, 5 Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709–3398
NDA 18–207	DESYREL (trazodone HCl) Tablets, 50 mg, 100 mg, 150 mg, and 300 mg	Apothecon, Inc.
NDA 19–425	TRANDATE (labetalol HCl) Injection, 5 mg/mL	Prometheus Laboratories, Inc., 9410 Carroll Park Dr., San Diego, CA 92121
NDA 20–101	PROZAC (fluoxetine HCl) Oral Solution, EQ 20 mg base/5 mL	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285
NDA 20–286	MONOPRIL–HCT (fosinopril sodium; hydrochlorothiazide) Tablets, 10 mg/12.5 mg, 20 mg/12.5 mg	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000
NDA 20–664	DOSTINEX (cabergoline) Tablet, 0.5 mg	Pharmacia and Upjohn Co.
NDA 20–683	ALESSE (ethinyl estradiol; levonorgestrel) Tablets (21 Tablets and 28 Tablets), 0.02 mg; 0.1 mg	Wyeth Pharmaceuticals Inc., P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 20–801	PEPCID AC (famotidine) Chewable Tablet, 10 mg	Merck Research Laboratories, Sumneytown Pike BLA 20, P.O. Box 4, West Point, PA 19486–0004
NDA 20–860	LEVLITE (ethinyl estradiol; levonorgestrel) Tablets (21 Tablets and 28 Tablets), 0.02 mg; 0.1 mg	Bayer Healthcare Pharmaceuticals, Inc., 340 Changebridge Rd., P.O. Box 1000, Montville, NJ 07045–1000
NDA 21–455	BONIVA (ibandronate sodium) Tablet, EQ 2.5 mg base	Hoffmann LaRoche, Inc., 340 Kingsland St., Bldg. 719/4, Nutley, NJ 07110–1199
NDA 50–517	MEFOXIN (cefoxitin sodium) Injection, EQ 1 gram (g) base/vial and EQ 2 g base/vial	Merck and Co., Inc., Sumneytown Pike BLA 20, P.O. Box 4, West Point, PA 19486–0004

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: March 8, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5275 Filed 3–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 14, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Anuja.Patel@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 14, 2010, the committee will: (1) Receive presentations from the Office of Generic Drugs (OGD) on a proposal for revision of the bioequivalence (BE) approaches, specifically to discuss the addition of a limitation on point estimates; (2) receive presentations on an awareness topic to highlight some issues associated with product instability (failure of a marketed product to meet stability specifications through the expiration date), and the potential research needs to address those issues; and (3) receive and discuss presentations from Office of Pharmaceutical Science (OPS) on the regulatory challenges of drug-induced phospholipidosis (excessive intracellular accumulation of phospholipids, a kind of fatty molecule, due to the use of certain drugs).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 30, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 22, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 23, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Anuja Patel at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 8, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–5264 Filed 3–10–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye 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/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 Eye Council.

Date: June 17, 2010.

Closed: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Open: 11 a.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by

the staff of the Institute and discussions concerning Institute programs.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Andrew P. Mariani, PhD, Executive Secretary, National Advisory Eye Council, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, (301) 451–2020, *apm@nei.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.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5175 Filed 3–10–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 in formation concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of person al privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Clinical Coordinating Support for NIDA Center for Clinical Trials Network (CCTN) (2221).

Date: April 6, 2010.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *1f33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Clinical Worlds: Enhancing Substance Abuse Provider Training Through Emerging Technologies (5544).

Date: April 27, 2010.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *1f33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Drug Scene Investigation Science (1138).

Date: April 28, 2010.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *1f33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–5171 Filed 3–10–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration, DHS.

ACTION: 60 day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0013, abstracted below, that we will submit to the Office of Management and Budget (OMB) for renewal and amendment in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves surveying travelers to measure customer satisfaction of aviation security in an effort to more efficiently manage airport performance.

DATES: Send your comments by May 10, 2010.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–40, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6040.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0013; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey. TSA, with OMB's approval, has conducted surveys of passengers and now seeks approval to continue this effort. TSA plans to conduct passenger surveys at airports nationwide. The surveys will be administered using an intercept methodology. The intercept methodology uses TSA personnel who are not in uniform to hand deliver paper survey forms to passengers immediately following the passenger's experience with the TSA's checkpoint security

functions. Passengers are invited, though not required, to complete and return the survey via pre-paid postage, which is prefixed to the survey, or passengers may submit their responses via an online portal. The intercept methodology randomly selects passengers to complete the survey in an effort to gain survey data representative of all passenger demographics—including passengers who—

- Travel on weekdays or weekends;
- Those who travel in the morning, mid-day, or evening;
- Those who pass through each of the different security screening locations in the airport;
- Those who are subject to more intensive screening of their baggage or person; and
- Those who experience different volume conditions and wait times as they proceed through the security checkpoints.

The survey includes ten to fifteen questions. Each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience.

TSA intends to collect this information in order to continue to assess customer satisfaction in an effort to more efficiently manage airport performance. In its future surveys, the TSA wishes to obtain more detailed, airport-specific data that the TSA can use to enhance customer experiences and airport performances. In order to gain more detailed information regarding customer experiences, the TSA is submitting eighty-one questions to OMB for approval. Twenty-eight of the questions have been previously approved by OMB and fifty-three questions are being submitted to the OMB for first-time approval. Each survey question seeks to gain information regarding one of the following categories:

- Confidence in Personnel
- Confidence in Screening Equipment
- Confidence in Security Procedures
- Convenience of Divesting
- Experience at Checkpoint
- Satisfaction with Wait Time
- Separation from Belongings
- Separation from Others in Party
- Stress Level

TSA personnel select passengers using a random method to voluntarily participate in the survey until the TSA obtains the desired sample size. The samples can be selected with one randomly selected time and location or span multiple times and location. Each airport may choose one or more of the following sample methods, which include a business card that directs customers to an online portal, a customer satisfaction card with survey questions on the card, or a customer satisfaction card with survey questions on the card and a link to the online portal. All responses are voluntary and there is no burden on passengers who choose not to respond.

TSA at airports have the capability to conduct this survey. We estimate that TSA at 25 airports will conduct the survey each year. Based on prior survey data and research, the TSA assumes a maximum volume for the survey would be 1,000 surveys per airport. We assume the burden on passengers who choose to respond to be approximately five minutes per respondent. Therefore, 1,000 surveys × 25 airports = 25,000 respondents a year, the total burden is 25,000 × 5 = 125,000 minutes, or 2083.3 hours per year.

Issued in Arlington, Virginia, on March 3, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–5176 Filed 3–10–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5328–N–03]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2010; Revised

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fair Market Rents (FMRs) for Fiscal Year 2010, Update.

SUMMARY: This notice updates the FMRs for Reno-Sparks, NV, and Ward County, ND, based on Random Digit Dialing (RDD) surveys conducted in October and November 2009.

DATES: *Effective Date:* March 11, 2010.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, a table of 40th percentile recent mover rents for those areas currently at the 50th percentile FMRs will be provided on the same website noted above. Any questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or further methodological explanations may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone (202) 708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: As the result of comments submitted in response to HUD's notice of proposed Fair Market Rents published on August 4, 2009 (74 FR 38716), HUD conducted Random Digit Dialing (RDD) surveys for the following FMR areas: Reno-Sparks, NV Metropolitan Statistical Area (MSA), and Ward County, ND. These RDD surveys began in October 2009 and were completed in November 2009. The RDD survey for Reno-Sparks, NV, indicated a significant decline in the FMR, while there was a significant increase indicated by the RDD survey for Ward County, ND. Both areas were having significant problems administering the Housing Choice Voucher program at the then current FY2009 FMRs, and anticipated continued difficulty under the proposed FY2010 FMRs. As a result, HUD is revising these FMRs as published on September 30, 2009 (74 FR 50552), effective immediately.

The FMRs for the two affected areas are revised as follows:

2010 Fair Market Rent Area	FMR by Number of Bedrooms in Unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Reno-Sparks, NV MSA	$577	$690	$853	$1,239	$1,498
Ward County, ND	$425	$512	$631	$872	$1,035

Dated: March 4, 2010

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–5168 Filed 3–10–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Conservation Advisory Group Charter Renewal; Notice of Charter Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the charter for the Yakima River Basin Conservation Advisory Group (CAG). The purpose of the CAG is to provide recommendations to the Secretary of the Interior and the State of Washington on the structure and implementation of the Yakima River Basin Water Conservation Program. In consultation with the State, the Yakama Nation, Yakima River basin irrigators, and other interested and related parties, six members are appointed to serve on the CAG.

The basin conservation program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

FOR FURTHER INFORMATION CONTACT: Ms. Dawn Wiedmeier, Deputy Area Manager, Yakima River Basin Water Enhancement Program, telephone 509–575–5848, extension 213.

Certification

I hereby certify that Charter renewal of the Yakima River Basin Conservation Advisory Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–5163 Filed 3–10–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Museum of Northern Arizona, Flagstaff, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Museum of Northern Arizona, Flagstaff, AZ, that meet the definitions of "sacred objects" and "objects of cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In January and September 2000, cultural items were gifted to the Museum of Northern Arizona by a private donor. The cultural items are Navajo sandpainting drawings and water color/pencil drawings, and are divided into three collections.

The first collection was originally collected by an old trading post family in the area of Farmington, NM. The 29 cultural items are 4 watercolors of sacred Navajo Yei figures and deities; 22 water colors and/or pencil drawings depicting Navajo ceremonial sandpaintings from specific chants; and 3 pages of hand written notes describing the Feather Way and Big Star Way ceremonies.

The second collection, by Ray Winnie, Lukachukai, AZ, circa 1920s, depicts a sacred Navajo ceremonial sandpainting. Mr. Winnie was a Singer of the Shooting Way ceremony. The one cultural item is a colored pencil drawing on brown paper.

The third collection, by Ray Winnie, Lukachukai, AZ, circa 1920s, depicts sacred Navajo ceremonial sandpaintings. Mr. Winnie was a Singer of the Shooting Way ceremony. The six cultural items consist of one notebook with pencil and crayon drawings, four color pencil drawings, and one muslin watercolor depicting Navajo ceremonies.

A traditional practitioner of Navajo religious ceremonies determined the images presented were of sacred esoteric knowledge with specific ceremonial properties that continue to be used by traditional Navajo religious practitioners. Based on the sacred esoteric knowledge of the images, the paintings could not have been obtained voluntarily nor could they have been alienated by a single individual, and instead belong to the tribe as a whole.

Officials of the Museum of Northern Arizona have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 36 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Museum of Northern Arizona also have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 36 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Museum of Northern Arizona have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects/objects of cultural patrimony and the Navajo Nation, Arizona, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Elaine Hughes, NAGPRA Contact, Museum of Northern Arizona, 3101 N. Ft. Valley Road, Flagstaff, AZ 86004, telephone (928) 774–5211, ext. 270, before April 12, 2010. Repatriation of the sacred objects/objects of cultural patrimony to the Navajo Nation, Arizona, New Mexico & Utah may proceed after that date if no additional claimants come forward.

The Museum of Northern Arizona is responsible for notifying the Navajo Nation, Arizona, New Mexico & Utah that this notice has been published.

Dated: December 10, 2010

Richard C. Waldbauer,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–5167 Filed 3–10–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Great Sand Dunes National Park and Preserve, Mosca, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the U.S. Department of the Interior, National Park Service, Great Sand Dunes National Park and Preserve, Mosca, CO. The human remains were removed from an unspecified site in Alamosa County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Great Sand Dunes National Park and Preserve.

A detailed assessment of the human remains was made by Great Sand Dunes National Park and Preserve professional staff in consultation with representatives of the Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of San Ildefonso, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico. The Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Santa Clara, New Mexico; and Pueblo of Taos, New Mexico were contacted for consultation purposes but did not attend the consultation meetings.

Between 1966 and 1968, human remains representing a minimum of three individuals were removed by George Owen Doty, a local resident, from an unspecified site south of Great Sand Dunes National Park and Preserve in Alamosa County, CO. After Doty's death in the 1980s, the human remains were found among his effects by his niece and were turned over to Great Sand Dunes National Park and Preserve in 2002. No known individuals were identified. No associated funerary objects are present.

A nondestructive osteological analysis by forensic anthropologists in Fort Collins, CO, and the fact that Doty had been an avid collector of American Indian artifacts indicate that the human remains are likely prehistoric Native American.

Officials of Great Sand Dunes National Park and Preserve have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Lastly, officials of Great Sand Dunes National Park and Preserve have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot reasonably be traced between the Native American human remains and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In February 2009, Great Sand Dunes National Park and Preserve requested that the Review Committee recommend disposition of the three culturally unidentifiable human remains to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah because the human remains were found within the tribe's aboriginal and historical territory. The Review Committee considered the proposal at its May 23–24, 2009, meeting and recommended disposition of the human remains to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

A September 16, 2009, letter from the Designated Federal Official, writing on behalf of the Secretary of the Interior, transmitted the authorization for the park to effect disposition of the physical remains of the culturally unidentifiable individuals to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Art Hutchinson, superintendent, Great Sand Dunes National Park and Preserve, 11500 Highway 150, Mosca, CO 81146, telephone (719) 378–6311, before April 12, 2010. Disposition of the human remains to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed after that date if no additional claimants come forward.

Great Sand Dunes National Park and Preserve is responsible for notifying the Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: February 18, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–5169 Filed 3–10–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN00000.L18200000.XZ0000]

Notice of Public Meeting: Northeast California Resource Advisory Council and Subcommittee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council and its Sage Steppe Ecosystem Subcommittee will meet as indicated below.

DATES: The RAC Sage Steppe Ecosytem Subcommittee will meet Friday, May 7, 2010, at 9 a.m. at the BLM Alturas Field Office, 708 W. 12th St., Alturas, California. The full RAC will meet Wednesday and Thursday, June 2 and 3, 2010, at the BLM Alturas Field Office. On June 2, the meeting begins at 10 a.m. and includes a field trip to lands managed by the BLM Alturas Field Office. On June 3, the meeting begins at 8 a.m. and adjourns about 3 p.m. Time for public comments has been reserved for 11 a.m.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California

District Manager, (530) 221–1743; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

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 northeast California and the northwest corner of Nevada. At the subcommittee meeting members will discuss multi-agency coordination for implementing projects under the Sage Steppe Ecosystem Restoration Strategy. Agenda topics for the full RAC meeting include consideration of a report from the subcommittee, updates on wilderness planning, emigrant trail conservation, sage grouse management, an update on the Ruby Pipeline, an update and status report on the National Landscape Conservation System, a report on planning for the Twin Peaks wild horse and burro gather, and updates on the Bly Tunnel and Modoc Line topics. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: February 26, 2010.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2010–5344 Filed 3–10–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N048]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Fifteenth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the fifteenth regular meeting of the Conference of the Parties to CITES (CoP15) in Doha, Qatar, during March 13–25, 2010. This notice announces the availability of tentative U.S. negotiating positions on amendments to the CITES Appendices (species proposals), draft resolutions and decisions, and agenda items submitted by other countries and the CITES Secretariat for consideration at CoP15. All of this information is on our website at *http://www.fws.gov/international/newspubs/fedregnot_list.html* and is also available from the U.S. Fish and Wildlife Service, Division of Management Authority.

DATES: In further developing U.S. negotiating positions on these issues, we will continue to consider information and comments submitted in response to our notice of November 4, 2009 (74 FR 57190). We will also continue to consider information received at the public meeting announced in that notice, which was held on December 2, 2009.

ADDRESSES: Requests for copies of tentative U.S. negotiating positions on amendments to the CITES Appendices (species proposals), draft resolutions and decisions, and agenda items submitted by other countries and the CITES Secretariat for consideration at CoP15 posted on our website should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 212; Arlington, VA 22203; or via e-mail at: *cop15@fws.gov*.

Available Information on CoP15

Information concerning the results of CoP15 will be available after the close of the meeting on the Secretariat's website at *http://www.cites.org;* or upon request from the Division of Management Authority; or on our website (*http://www.fws.gov/international/DMA_DSA/CITES/CITES_home.html*).

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, decisions, and agenda items contact: Robert R. Gabel, Chief, Division of Management Authority; telephone, 703-358-2095; e-mail, *cop15@fws.gov*. For information pertaining to species proposals contact: Dr. Rosemarie Gnam, Chief, Division of Scientific Authority; telephone, 703-358-1708; e-mail, *scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These species are listed in Appendices to CITES, which are available on the CITES Secretariat's website at *http://www.cites.org/eng/app/appendices.shtml*. Currently, 175 countries, including the United States, are Parties to CITES. The Convention calls for biennial meetings of the Conference of the Parties to review its implementation, make provisions enabling the CITES Secretariat to carry out its functions, consider amendments to the lists of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, and draft resolutions, decisions, and agenda items for consideration by all the Parties. Accredited nongovernmental organizations (NGOs) may participate in the meeting as approved observers and may speak during sessions when recognized by the meeting Chairman, but they may not vote or submit proposals.

This is our fourth in a series of **Federal Register** notices on the development of U.S. submissions and tentative negotiating positions for CoP15. In this notice we announce the availability on our website of tentative U.S. negotiating positions on species proposals, draft resolutions and decisions, and agenda items submitted by other Parties and the Secretariat for consideration at CoP15. All of this information is also available from the U.S. Fish and Wildlife Service, Division of Management Authority (see "**ADDRESSES**," above). We published our first CoP15-related **Federal Register** notice on September 29, 2008 (73 FR 56605), and with it we requested information and recommendations on species proposals, draft resolutions and decisions, and agenda items for the United States to consider submitting for consideration at CoP15. We published our second such **Federal Register** notice on July 13, 2009 (74 FR 33460), and with it we requested public comments and information on species proposals, draft resolutions and decisions, and agenda items that the United States was considering submitting for

consideration at CoP15. In our third **Federal Register** notice, published on November 4, 2009 (74 FR 57190), we announced the provisional agenda for CoP15, solicited public comments on items on the provisional agenda, and announced a public meeting to discuss the agenda items. That public meeting was held on December 2, 2009.

You may obtain information on the above **Federal Register** notices from the following sources. For information on draft resolutions and decisions, and agenda items, contact the Division of Management Authority (see "**ADDRESSES**," above); and for information on species proposals, contact the Division of Scientific Authority (see "**ADDRESSES**," above). Our regulations governing this public process are found in 50 CFR 23.87. Pursuant to 50 CFR 23.87(a)(3)(iii), with this notice we are posting on our website (*http://www.fws.gov/international/newspubs/fedregnot_list.html*) a summary of our proposed negotiating positions on the items included in the CoP15 agenda and proposed amendments to the Appendices, and the reasons for our proposed positions.

Tentative Negotiating Positions

On our website (*http://www.fws.gov/international/newspubs/fedregnot_list.html*), we summarize the tentative U.S. negotiating positions on proposals to amend the Appendices (species proposals), draft resolutions and decisions, and agenda items that have been submitted by other countries and the CITES Secretariat. Documents submitted by the United States either alone or as a co-proponent for consideration by the Parties at CoP15 can be found on the Secretariat's website at: *http://www.cites.org/eng/cop/index.shtml*. Those documents are: CoP15 Docs. 36, 41.3, 41.4, 41.5, 48, 54, and 67. The United States, either alone or as a co-proponent, submitted the following proposals to amend Appendices I and II: CoP15 Props. 2, 3, 15, 16, 21, 25, 28, and 31. We will not provide any additional explanation of the U.S. negotiating position for documents and proposals that the United States submitted. The introduction in the text of each of the documents the United States submitted contains a discussion of the background of the issue and the rationale for submitting the document.

AUTHOR: This notice was prepared by Clifton A. Horton, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 5, 2010

Daniel M. Ashe

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. 2010–5458 Filed 3–9–10; 4:15 pm]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12200000.AL 0000]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, March 26, 2010, from 8 a.m. to 4:30 p.m. and will meet in formal session on Saturday, March 27, 2010, from 8 a.m. to 4:30 p.m. at Cal Works Building, 2895 S. 4th St., El Centro, CA 92243. Agenda topics will include updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics may include updates on legislation, the Wild Horse and Burro program, and renewable energy. Final agenda items, including details of the field tour, will be posted on the BLM California state Web site at *http://www.blm.gov/ca/st/en/info/rac/dac.html.*

SUPPLEMENTARY INFORMATION: All California Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the meeting is tentatively scheduled to conclude at 4:30 p.m. on Saturday, it could conclude earlier should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, (951) 697–5220.

Dated: March 3, 2010.

Jack L. Hamby,

Acting District Manager.

[FR Doc. 2010–5365 Filed 3–10–10; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1163 (Final)]

Woven Electric Blankets From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1163 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of woven electric blankets, provided for in subheading 6301.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS).[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as finished, semi-finished, and unassembled woven electric blankets, including woven electric blankets commonly referred to as throws, of all sizes and fabric types, whether made of man-made fiber, natural fiber or a blend of both. Semi-finished woven electric blankets and throws consist of shells of woven fabric containing wire. Unassembled woven electric blankets and throws consist of a shell of woven fabric and one or more of the following components when packaged together or in a kit: (1) Wire; (2) controller(s). The shell of woven fabric consists of two sheets of fabric joined together forming a "shell." The shell of woven fabric is manufactured to accommodate either the electric blanket's wiring or a subassembly containing the electric blanket's wiring (*e.g.,* wiring mounted on a substrate). A shell of woven fabric that is not packaged together, or in a kit, with either wire, controller(s), or both, is not covered by this investigation even though the shell of woven fabric may be dedicated solely for use as a material in the production of woven electric blankets. Although the HTSUS subheading is provided for convenience and customs purposes, only the written description of the scope is dispositive.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* February 3, 2010.

FOR FURTHER INFORMATION CONTACT: Joshua Kaplan (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of woven electric blankets from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 30, 2009, by Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions, Boca Raton, FL.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 15, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on June 29, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 22, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 24, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 22, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 6, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before July 6, 2010. On July 21, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 23, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 8, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–5234 Filed 3–10–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. Bahrain-FTA–103–025]

Certain Combed Cotton Yarns: Effect of Modification of U.S.-Bahrain FTA Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on February 12, 2010, from the U.S. Trade Representative (USTR) under authority delegated by the President and pursuant to section 104 of the United States-Bahrain Free Trade Agreement (FTA) Implementation Act (19 U.S.C. 3805 note), the Commission instituted investigation No. Bahrain FTA–103–025, *Certain Combed Cotton Yarns: Effect of Modification of U.S.-Bahrain FTA Rules Of Origin*.

DATES: *April 29, 2010:* Deadline for filing all written submissions.

On or before July 12, 2010: Transmittal of report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Co-project Leaders Heidi Colby-Oizumi (202–205–3391 or *heidi.colby@usitc.gov*) or Kimberlie Freund (202–708–5402 or *kimberlie.freund@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Chapter 3, Annex 3–A and Chapter 4 of the FTA contain the rules of origin for textiles and apparel for application of the tariff provisions of the FTA. These rules are reflected in General Note 30 of the Harmonized Tariff Schedule of the United States (HTS). According to the USTR's request letter, U.S. negotiators have recently reached agreement in principle with representatives of the government of Bahrain on certain modifications to the rules of origin to the FTA for certain combed cotton yarns used in the production of certain home furnishings, as described in the attachment to the letter (for the text of the letter and attachment, see the Commission's Web site for this investigation at *http://www.usitc.gov/research_and_analysis/What_We_Are_Working_On.htm).* Section 202(j) of the United States-Bahrain Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 104 of the Act, to proclaim such modifications to the rules of origin as are necessary to implement an agreement pursuant to Article 3.2.5 of the FTA. One of the requirements set out in section 104 of the Act is that the President obtain advice from the United States International Trade Commission. The request letter asks that the Commission provide advice on the probable effect of the proposed modifications on U.S. trade under the U.S.-Bahrain FTA, total U.S. trade, and on domestic producers of the affected articles. The USTR asked that the Commission provide its report containing its advice by July 12, 2010, and that the Commission shortly thereafter issue a public version of the report with any confidential business information deleted. Additional information concerning the articles and the proposed modifications, including a copy of the USTR's request letter, can be obtained by accessing the Commission's Web site at *http://www.usitc.gov.* The current U.S.-Bahrain FTA rules of origin applicable to U.S. imports can be found in general note 30 of the HTS (*see* "General Notes" link at *http://www.usitc.gov/tata/hts/bychapter/index.htm*).

Written Submissions: No public hearing is planned. However, interested parties are invited to file written submissions and other information concerning the matters to be addressed in this investigation. All written submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions relating to the Commission's advice should be submitted at the earliest possible date, and should be received not later than 5:15 p.m., April 29, 2010. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize the filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook on Electronic Filing Procedures, *http://www.usitc.gov/docket_services/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the Aconfidential@ or Anon-confidential@ version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Issued: March 4, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–5218 Filed 3–10–10; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 8–9, 2010.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Inn on Biltmore Estate, I Approach Road, Asheville, NC 28803.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 4, 2010.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 2010–5072 Filed 3–10–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 22–23, 2010.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Empire Hotel, 44 W 63rd Street, New York, NY 10023.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 4, 2010.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 2010–5073 Filed 3–10–10; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 14–15, 2010.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle, NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 4, 2010.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 2010–5074 Filed 3–10–10; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and Clean Air Act

Notice is hereby given that on March 5, 2010, a proposed Consent Decree in *United States* v. *ESSROC San Juan, Inc.,* Civil Action No. 3:09–cv–01578, was filed with the United States District Court for the District of Puerto Rico.

In this action, the United States sought penalties and injunctive relief for the Defendant's violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* and the Clean Air Act, 42 U.S.C. 7401 *et seq.* at its portland cement manufacturing plant in Dorado, Puerto Rico.

To resolve the United States' claims, the Defendant will pay a penalty of $275,000 and perform injunctive relief including the installation of water effluent controls, the rerouting of air emissions through control devices, and enhanced monitoring provisions. In addition the Defendant will perform a supplemental environmental project requiring it to grant a conservation easement over 5.3 acres of land to the Puerto Rico Department of Natural Resources.

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 emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to either: *United States* v. *ESSROC San Juan, Inc.,* Civil Action No. 3:09–cv–01578, D.J. Ref. 90–5–2–1–08412. The Consent Decree may be examined at the Office of the United States Attorney for the District of Puerto Rico at Torre Chardon, Suite 1201, 350 Carlos Chardon Avenue, San Juan, Puerto Rico 00918, and at U.S. EPA Region 2 Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce Deleon Avenue, Suite 417, San Juan, Puerto Rico 00907. 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 $13.25 (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.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–5223 Filed 3–10–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Training for Executive Excellence: Leadership Style and Instrumentation Curriculum Development

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections' (NIC), Academy Division is seeking applications for the development of a competency based, blended modality training curriculum that will provide correctional executives with the knowledge, skills and abilities necessary to become more self-aware, ethical and value based, a strategic thinker, more organizationally influential, collaborative, team oriented, capable of setting effective organizational priorities, identifying a strategic vision and mission, and creating collaborative partnerships in the external environment.

DATES: Applications must be received by 4 p.m. on Thursday, March 25, 2010.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: All technical or programmatic questions concerning this announcement should be directed to Robert M. Brown, Jr., Chief, National Institute of Corrections Academy. He can be reached by calling 303–365–4400, or by e-mail at *rbrown@bop.gov.*

SUPPLEMENTARY INFORMATION:

Overview: NIC is looking to develop a curriculum, which follows NIC's Instructional Theory Into Practice (ITIP) model. The curriculum is to be based on the National Institute of Corrections' "Correctional Leadership Competencies for the 21st Century" for the executive level. It is expected that the curriculum will utilize blended learning formats to accommodate the possibility of distance learning. The curriculum will be piloted, offered and changes made based upon NIC's evaluation protocol for the program.

Background: NIC has been committed for years to improving executive performance by providing excellent leadership and management training to corrections professionals. In an effort to expand on the resources NIC has provided the field with the document "Correctional Leadership Competencies for the 21st Century", a portion of which specifically addresses the role of Correctional Executive, the next step is to create a blended training curriculum for this position.

Purpose: To create a training curricula for the Academy's Executive Excellence Program.

Scope of Work: At the end of this Cooperative Agreement, a curriculum will be developed using NIC's Instructional Theory Into Practice (ITIP) model. The curriculum will include a facilitator's manual, participant's manual, and all relevant supplemental material (such as PowerPoint slides, visual and/or audio aids, handouts, exercises, etc.). The use of blended learning tools such as a live web-based training environment (*e.g.* WebEx) or supplemental on-line training courses is expected. Clear learning objectives will be contained in each lesson, with delivery modalities based on how to most efficiently and effectively achieve these objectives.

The curriculum will be piloted and changes incorporated as necessary. Consideration will be given to advance work for participants, such as reading assignments or taking an online course through NIC's Learn Center. An evaluation, to be distributed at the beginning and conclusion of the training, has already been developed. This evaluation protocol examines the content, processes, and delivery of the program. The evaluation has been designed with the purpose in mind of helping to revise and improve the training and curricula.

Specific Requirements:

The document "Correctional Leadership Competencies for the 21st Century" has identified needs for Correctional Executives. This document is to be the foundation for the development of the training curricula.

Modules may address the following: A 360 degree model for executives; Executive problem solving; Executive leadership development plan; a series of executive team building exercises; Exploration of leadership styles through the Myers-Briggs Type Indicator; An emotional intelligence and leadership profile; An organizational simulation; A strategic approach to communication; Designing an executive peer observation process for the non-traditional classroom; A blended executive book review process; A framework that links the developmental feedback and executive competency models for the program; The executive team: who, how, when, and why; Executive decision-making; and Assisting with the development of recommended materials for the participant notebook.

Document Preparation: For all awards in which a document will be a deliverable, the awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the "General Guidelines for Cooperative Agreements" which will be included in the award package. All final publications submitted for posting on the NIC website must meet the federal government's requirement for accessibility (508 PDF or HTML file). All documents developed under this cooperative agreement must be submitted in draft form to NIC for review before the final products are delivered.

Application Requirements: Applications should be concisely written, typed double spaced and reference the project by the "NIC Opportunity Number" and Title in this announcement. The package must include: A cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative in response to the statement of work and a budget narrative explaining projected costs. *The following forms must also be included:* OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf.*)

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding

accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for the activities that are linked to the desired outcome of the project.

This project will be completed for the National Institute of Corrections Academy Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to a 3 to 5 person NIC Peer Review Process.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: http://www.ccr.gov. A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 10A62. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

(Catalog of Federal Domestic Assistance Number 16.601)

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2010–5236 Filed 3–10–10; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Training for Executive Excellence: The Role of the Correctional CEO Curriculum Development

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections' (NIC), Academy Division is seeking applications for the development of a competency based, blended modality training curriculum that will provide correctional executives with the knowledge, skills and abilities necessary to become more self-aware, ethical and value based, a strategic thinker, more organizationally influential, collaborative, team oriented, capable of setting effective organizational priorities, identifying a strategic vision and mission, and creating collaborative partnerships in the external environment.

DATES: Applications must be received by 4 p.m. on Thursday, March 25, 2010.

ADDRESSES: *Mailed applications must be sent to:* Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: All technical or programmatic questions concerning this announcement should be directed to Robert M. Brown, Jr., Chief, National Institute of Corrections Academy. He can be reached by calling 303–365–4400, or by e-mail at *rbrown@bop.gov.*

SUPPLEMENTARY INFORMATION:

Overview: NIC is looking to develop a curriculum, which follows NIC's Instructional Theory Into Practice (ITIP) model. The curriculum is to be based on the National Institute of Corrections' "Correctional Leadership Competencies for the 21st Century" for the executive level. It is expected that the curriculum will utilize blended learning formats to accommodate the possibility of distance learning. The curriculum will be piloted, offered and changes made based upon NIC's evaluation protocol for the program.

Background: NIC has been committed for years to improving executive performance by providing excellent leadership and management training to corrections professionals. In an effort to expand on the resources NIC has provided the field with the document "Correctional Leadership Competencies for the 21st Century", a portion of which specifically addresses the role of Correctional Executive, the next step is to create a blended training curriculum for this position.

Purpose: To create a training curricula for the Academy's Executive Excellence Program.

Scope of Work: At the end of this Cooperative Agreement, a curriculum will be developed using NIC's Instructional Theory Into Practice (ITIP) model. The curriculum will include a facilitator's manual, participant's manual, and all relevant supplemental material (such as PowerPoint slides, visual and/or audio aids, handouts, exercises, etc.). The use of blended learning tools such as a live web-based training environment (*e.g.* WebEx) or supplemental on-line training courses is expected. Clear learning objectives will be contained in each lesson, with delivery modalities based on how to most efficiently and effectively achieve these objectives.

The curriculum will be piloted and changes incorporated as necessary. Consideration will be given to advance work for participants, such as reading assignments or taking an online course through NIC's Learn Center. An evaluation, to be distributed at the beginning and conclusion of the training, has already been developed. This evaluation protocol examines the content, processes, and delivery of the program. The evaluation has been designed with the purpose in mind of helping to revise and improve the training and curricula.

Specific Requirements: The document "Correctional Leadership Competencies for the 21st Century" has identified needs for Correctional Executives. This document is to be the foundation for the development of the training curricula.

Modules may address the following: Correctional policy development; Reacting to and managing the media; Ethical dilemmas and ethical decision-making; Building, moving, and maintaining an executive agenda; Managing troubled organizations; Human resources in the new era; Tactics and strategies for dealing with legislative bodies; Case studies in executive decision-making; Marketing research and correctional marketing; Executive performance at the state, local, and federal levels; How to compete for an executive position; Correctional policy analysis and development; *The executive team:* who, how, when, and why; and Executive decision-making.

Document Preparation: For all awards in which a document will be a deliverable, the awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the "General Guidelines for Cooperative Agreements" which will be included in the award package. All final

publications submitted for posting on the NIC website must meet the federal government's requirement for accessibility (508 PDF or HTML file). All documents developed under this cooperative agreement must be submitted in draft form to NIC for review before the final products are delivered.

Application Requirements: Applications should be concisely written, typed double spaced and reference the project by the "NIC Opportunity Number" and Title in this announcement. The package must include: a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative in response to the statement of work and a budget narrative explaining projected costs. *The following forms must also be included:* OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf.)*

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for the activities that are linked to the desired outcome of the project.

This project will be completed for the National Institute of Corrections Academy Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to a 3 to 5 person NIC Peer Review Process.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: http://www.ccr.gov. A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 10A61. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2010–5237 Filed 3–10–10; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jovencio L. Raneses, M.D.; Denial of Application

On August 28, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Jovencio L. Raneses, M.D. (Respondent), of San Diego, California. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BR5257907, which authorized him to dispense controlled substances in schedules II through V as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that Respondent lacks authority to handle controlled substances in California, the State in which he is registered. Show Cause Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(3)). The Order further notified Respondent of his rights to contest the action under 21 CFR 1301.43(a) & (c), and that if he failed to request a hearing, he would be deemed to have waived his right to a hearing. Show Cause Order at 2.

As evidenced by the signed return receipt card, on August 31, 2009, the Government served the Show Cause Order on Respondent by certified mail to his residence in San Marcos, California. GX B. Since that time, neither Respondent, nor anyone purporting to represent him, has either requested a hearing on the allegations or submitted a written statement in lieu of a hearing. Accordingly, I find that Respondent has waived both his right to a hearing and his right to submit a written statement in lieu of a hearing. *See* 21 CFR 1301.43(d). I therefore enter this Decision and Final Order without a hearing based on evidence contained in the record submitted by the Government. I make the following findings.

Findings

Respondent previously held DEA Certificate Registration, BR5257907, which authorized him to dispense controlled substances in schedules 2N, 3N, 4 and 5, as a practitioner, at the registered location of 1666 Garnet Avenue, # 708, San Diego, California. GX E, at 1. On May 1, 2003, Respondent last renewed this registration; the registration was assigned an expiration date of April 30, 2006. *Id.* On September 27, 2006, nearly five months after the registration expired, Respondent submitted an application to renew this registration. *Id.* Based on the above, I find that Respondent has a current application before the Agency. However, I conclude that because Respondent did not file a timely application to renew the registration, the registration has not remained in effect pending the issuance of the Final Order in this matter. *See* 5 U.S.C. 558(c) ("When the licensee has made *timely* and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.") (emphasis added).

Respondent also previously held Physician's and Surgeon's Certificate No. C37687, which was issued by the Medical Board of California. *See In re Jovencio L. Raneses, M.D.,* Default Decision and Order, at 1 (Med. Bd. of Cal., Jan. 27, 2009). However, the certificate expired on April 30, 2007, and was not renewed. *Id.* Moreover, on May 27, 2008, the Executive Director of the Board filed an accusation against Respondent alleging that he failed to comply with the Board's order of February 26, 2008 that he submit to psychiatric and physical examinations no later than 30 days from the date of the order. *In re Jovencio L. Raneses, M.D.,* Accusation at 4–5. Based on

Respondent's failure to file a Notice of Defense to the Accusation within fifteen days as required by California law, the Board found that Respondent was in default and that the allegations of the accusation were true. Default Decision and Order, at 3–4. The Board then ordered that Respondent's Physician's and Surgeon's Certificate be revoked effective on February 26, 2009. *Id.* at 5. Moreover, according to the online records of the Board, Respondent's state license remains revoked.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances "under the laws of the State in which he practices" in order to obtain and maintain a DEA registration. *See* 21 U.S.C. 823(f) ("The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices."). *See also id.* § 802(21) ("[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice"). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

Because Respondent's California medical license has been revoked, he is without authority under state law to handle controlled substances and thus does not meet a fundamental statutory requirement for obtaining a new registration. *See* 21 U.S.C. 823(f); *see also Richard Carino, M.D.,* 72 FR 71955, 71956 (2007). Accordingly, his application for a new DEA registration must be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Jovencio L. Raneses, M.D., for a DEA Certificate of Registration, be, and it hereby is, denied. This Order is effective April 12, 2010.

Dated: March 3, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–5198 Filed 3–10–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act Of 1993—Telemanagement Forum

Notice is hereby given that, on February 1, 2010 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), TeleManagement Forum ("the Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 4STARS Ltd., Zagreb, CROATIA; ACN, Inc., Concord, NC; AKT Solutions Ltd., South Croydon, UNITED KINGDOM; Albanian Mobile Communications Sh. A., Tirane, ALBANIA; Alclarus Limited, London, UNITED KINGDOM; ATLAS TELECOM Ltd, Moscow, RUSSIA; Blue Technology Corp, Taipei City, TAIWAN; Bright Consulting, Sofia, BULGARIA; Broadband Infraco (Pty) Ltd. Johannesburg, Gauteng, SOUTH AFRICA; Cable Television Laboratories Inc., Louisville, CO; CableVision, SA, Buenos Aires, ARGENTINA; CBOSS Middle East FZ–LLC, Dubai, UNITED ARAB EMIRATES; Ciminko, LUXEMBOURG; Commonwealth Bank of Australia, Sydney, NSW, AUSTRALIA; Compuware Corporation, Detroit, MI; Comware C&C International, Corp., Taipei, TAIWAN; Corel80, Fairfax, VA; CSN Technology Pty Ltd, Eveleigh, NSW, AUSTRALIA; Czech Technical University in Prague, Prague, CZECH REPUBLIC; Deutsche Bank, New York, NY; Empirix Inc., Bedford, NH; Enabling Potential, Inc., Ajax, Ontario, CANADA; Enghouse Systems Limited/ Asset Management Division, Markham, Ontario, CANADA; Enterprise Designer Institute, Daylesford, VIC, AUSTRALIA; EPM Telecom unicaciones S.A. E.S.P, Medellin, Antioquia, COLOMBIA; e-Stratega S.R.L., Olivos, Buenos Aires, ARGENTINA; Etisalat Cote d'Ivoire, Abidjan, IVORY COAST; Etisalat Misr, Cairo, EGYPT; Etisalat Nigeria, Banana Island, Ikoyi, Lagos, NIGERIA; ExcelaCom, Inc., Reston, VA; EXFO (Service Assurance), Chelmsford, MA; Exigen USA, Inc., San Francisco, CA; Federal University of Espirito Santo, Vitória, Espirito Santo, BRAZIL; Forschungsinstitut für Rationalisierung, Aachen, GERMANY; Forther Ltda, Sao Paulo, SP, BRAZIL; GLOCOMP SYSTEMS (M) SDN. BHD., Petaling Jaya, Selangor, MALAYSIA; In-Corp AG, Victoria, BC, CANADA; Infosim GmbH & Co. KG, Wurzburg, GERMANY; Inidat Consulting, Capital Federal, ARGENTINA; INTEC Telecom Systems, Woking, Surrey, UNITED KINGDOM; Ipko Telecommunications LLC, Pristine, Kosova, SLOVENIA; Irdeto BSS, Carlsbad, CA; IT Management LTDA, Santiago, CHILE; IT Services Hungary LTD, Budapest, HUNGARY; Kulacom, Amman, JORDAN; MicroSigns, Inc., Montreal, Quebec, CANADA; Moov Benin, Porto-Novo, REPUBLIC OF BENIN; MOOV Central African Republic, Bangui, CENTRAL AFRICAN REPUBLIC; Moov Gabon, Liberville, GABON; Moov Togo, Lomé, TOGO; NS Solutions USA Corporation, San Mateo, CA; Nucleus Connect Pte Ltd, Singapore, SINGAPORE; OKTET Labs Ltd., St. Petersburg, RUSSIA; Omniware Solutions, Inc., Toronto, Ontario, CANADA; ORB Software and Systems PTE LTD, Singapore, SINGAPORE; OSS Evolution, Ottawa, Ontario, CANADA; Oss Wave, Gatineau, Quebec, CANADA; Pegasystems, Inc., Cambridge, MA; Praesidium, Reading, UNITED KINGDOM; PT Tricada Intronik, Bandung, Jawa Barat, INDONESIA; Qualicom Innovations (Asia) Limited, Hong Kong, HONG–KONG CHINA; RiverMuse, London, UNITED KINGDOM; SARA computing and networking services, Amsterdam, NETHERLANDS; Sincera Consulting, LLC, Manchester, NH; SMI Technologies, London, UNITED KINGDOM; ech Nexxus, LLC, Potomac, MD; Telcel Niger (Etisalat), Niamey, NIGER;Telefonica Chile S.A., Santiago, Region Metropolitana, CHILE; Telefonica Ecuador/Otecel S.A., Quito, Quito, ECUADOR; Transmode Systems AB, Stockholm, SWEDEN; uFONE, Islamabad, PAKISTAN; Unisys Consulting Spain, Madrid, SPAIN; Viettel Corporation, Hanoi, VIETNAM; Virtus IT Limited, London, UNITED KINGDOM; Vodafone Ghana, Accra North, GHANA; Volubill, Montbonnot Saint Martin, FRANCE; Voxbone, Brussels, BELGIUM; and Wiston Wolf—Engenharia e Consultoria Lda Algés, PORTUGAL, have been added as parties to this venture.

The following members have changed their names: Albanian Mobile Communications to Albanian Mobile Communications Sh. A.; Lyse Tele AS to Altibox AS; Servei de Telecomunicacions d'Andorra to Andorra Telecom; Bluetouch to Blue Technology Corp; Broadband Infraco to Broadband Infraco (Pty) Ltd; CBOSS

Group to CBOSS Middle East FZ–LLC; Martin Group to CHR Solutions; Devoteam Consulting A/S to Devotearn Consulting A/S, Danish Telecoms Business Unit; EITC to DU; Empirix to Empirix Inc; Enghouse Systems Limited to Enghouse Systems Limited/Asset Management Division; e-Stratega to e-Stratega S.R.L.; EXFO America, Inc. to EXFO (Service Assurance); Exigen Group to Exigen USA, Inc.; Hitachi Telecom to Hitachi Communication Technologies America, Inc.; In-Corp to In-Corp AG; Intec Telecom Systems PLC to INTEC Telecom Systems; IBS Interprit to Irdeto ESS; IT Management to IT Management LTDA; Buddha Software to Matrixx Soft ware; MTN Group to MTN SA (Pty) ltd.; Omniware to Omniware Solutions, Inc.; ORB Software & Systems Pte Ltd to ORB SOFTWARE AND SYSTEMS PTE LTD; Packet Front to PacketFront Systems AB; Pegasystems to Pegasystems, Inc.; romonLog icalis Tecnologia SA to PromonLogicalis Tecnologia E Participacoes Ltda.; SMI Telco to SMI Technologies; TEDESCA.BIZ to TEDESCA; Telefonica Chile to Telefonica Chile S.A. (brand name Movistar Chile); Telefonica Ecuado to Tele fonica Ecuador/Otecel S.A.; Unisys Consulting to Unisys Consulting Spain.

AinaCom Oy, Hämeenlinna, FINLAND; Altran-Europe, Brussels, BELGIUM; Architecting-the-Enterprise, High Wycombe, Buckinghamshire, UNITED KINGDOM; Arismore, Saint-Cloud cedex, FRANCE; ASTELLIA, Vern Sur Seiche, FRANCE; ATG, Forbury Rd, Reading, UNITED KINGDOM; Atos Origin, Zurich, SWITZERLAND; Atreus Systems, Ottawa, Ontario, CANADA; Biap Systems, Inc., Sterling, VA; Billing College, Teaneck, NJ; Bizitek, Istanbul, TURKEY; BlackArrow, Inc., San Mateo, CA; Bren nan Software Development PTY LTD, Sydney, NSW, AUSTRALIA; Citizens Telecom Services Company L.L.C., Stamford, CT; Customer One Solutions, Inc, Cornelius, NC; Dataupia, Cambridge, MA; Edge Technologies, Fairfax, VA; Elektro Slovenija d.o.o, Ljubljana, SLOVENIA; Highdeal, Caen, FRANCE; LBS LTD, Moscow, RUSSIA; Infosys Technologies Ltd., Bangalore, INDIA; Innovative Systems, Mitchell, SD; Kentor IT AB, Stockholm, SWEDEN; Keste, LLC, Piano, TX; King Mongkut's University of Technology Thonburi, Bangmod, Toongkru, THAILAND; KPMG Advisory Spolka z ograniczona odpowiedzialnoscia sp.k, Warsaw, POLAND; Mantra Communication AB, Göteborg, SWEDEN; Metabula Ltd, Cambridge, Cambridgeshire, UNITED KINGDOM; MTN Carneroon, Douala, Littoral region, CANEROON; MTN Zambia, Lusaka, ZAMBIA; NetAge Solutions. GInbH, Munich, GERMANY; NetOne, Shina gawa-ku, Tokyo, JAPAN; NetworkedAssets GmbH, Berlin, GERMANY; Newsdesk Media Group, London, UNITED KINGDOM; ONE–ANS SpA, Monza, Milan, ITALY; Open Cloud, Wellington, NEW ZEALAND; Optima Soft, Korolev, RUSSIA; Picsel Technologies Ltd, Glaskow, UNITED KINGDOM; Polska Telefonia Cyfrowa (PTC), Warsaw, POLAND; Polystar OSIX, Farsta, SWEDEN; Reliance Communications Limited, Navi Mumbai, Maharashtra, INDIA; RightStar Systems, Vienna, VA; Satyam Computer Services Ltd., Parsippany, NJ; ScoZA Uganda Limited, Kampala, UGANDA; SevenTest R&D Centre Co. Ltd., Saint-Petersburg, RUSSIA; Tata Teleservices Ltd. Mumbai, Maharashtra, INDIA; Tech Mahindra, Andheri East, Mumbai, INDIA; Telfort B.V., Amsterdam, NETHERLANDS; The CNIA Group, Westfield, NJ; theNetStart Platform Ltd, Sheffield, UNITED KINGDOM; THUS, Glasgow, Glasgow, UNITED KINGDOM; True Click Solutions LLC, Pittsburgh, PA; Uralsvyazinform JSC, Ekaterinburg, Russia; Vernikov and Partners Group, Moscow, RUSSIA; Westwood One/Metro Networks, New York, NY; Wind Hellas Telecommunications SA, Maroussi, Athens, GREECE; Xebia BV, Hilversum, NETHERLANDS; and Zeugma Systems, Richmond, BC, CANADA, have withdrawn as parties to this venture.

The following have changed their addresses: To Technologies to Espoo, FINLAND; Aspivia Ltd to Bournemouth, UNITED KINGDOM; CHR Solutions to Houston, TX; Cordys to Putten, NETHERLANDS; CSG Systems Inc. to Englewood, CO; Devoteam Consulting A/S, Danish Telecoms Business Unit to Copenhagen, DENMARK; Eastek Pty Ltd to Melbourne, Victoria, AUSTRALIA; Exigen USA, Inc. to San Francisco, CA; i2i Bilisim Ve Teknoloji Danismanlik Tic Ltd to Gebze/Kocaeli, TURKEY; INTEC Telecom Systems to Woking, Surrey, UNITED KINGDOM; MBR Partners to Berkeley Square, London, UNITED KINGDOM; MTN SA (Pty) ltd. to Randburg, Gauteng, SOUTH AFRICA; PT Bakrie Telecom to Jakarta Selatan, Jakarta, INDONESIA; PT Global Innovation Technology to Jakarta Selatan, Jakarta, INDONESIA; Quantellia to Denver, CO; TELEFONICA to Torre Santiago, CHILE; Telesoft-Russia to Moscow, RUSSIA; Trammell Craig & Associates to Farmington, NM; Trilogy Software Bolivia to Cochabamba, BOLIVIA; and Volubill to Montbonnot Saint Martin, FRANCE.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988(53 FR 49615).

The last notification was filed with the Department on July 22, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 17, 2009 (74 FR 47824).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–5034 Filed 3–10–10; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly Meeting.

DATES AND TIMES:

April 19, 2010, 8:30 a.m.–3 p.m.
April 20, 2010, 8:30 a.m.–3 p.m.

LOCATION: Detroit Marriott at the Renaissance Center, Renaissance Center, Detroit, MI 48243.

STATUS:

April 19, 2010, 8:30 a.m.–3 p.m.—Open.
April 20, 2010, 8 a.m.–8:30 a.m.—Closed Executive Session.
April 20, 2010, 8:30 a.m.–3 p.m.—Open.

AGENDA: Public Comment Sessions; Emergency Management; Developmental Disabilities and Bill of Rights Act, International Development, National Summit on Disability Policy 2010, United States Marine Corps Research Project, Technology, Reports from the Chairperson and Council Members; Unfinished Business; New Business; Announcements; Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Public Affairs, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

AGENCY MISSION: NCD is an independent federal agency, composed of 15 members appointed by the President, by and with the consent of the U.S. Senate.

The purpose of the NCD is to promote policies, programs, practices, and

procedures that guarantee equal opportunity for all individuals with disabilities, and that empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

To carry out this mandate we gather public and stakeholder input, including that received at our public meetings held around the country; review and evaluate federal programs and legislation; and provide the President, Congress and federal agencies with advice and recommendations.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

Dated: March 4, 2010.

Joan M. Durocher,

Executive Director.

[FR Doc. 2010–5407 Filed 3–9–10; 11:15 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412; NRC–2010–0086]

Firstenergy Nuclear Operating Company, Firstenergy Nuclear Generation Corp., Ohio Edison Company, The Toledo Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License for Beaver Valley Power Station, Unit No. 2; Opportunity for A Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Order and notice of license amendment request, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by April 12, 2010. A request for a hearing must be filed by May 10, 2010.

FOR FURTHER INFORMATION CONTACT: Nadiyah Morgan, Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852–2738. Telephone: (301) 415–1016; fax number: (301) 415–2102; e-mail: *Nadiyah.Morgan@nrc.gov.*

ADDRESSES: Please include Docket ID NRC–2010–0086 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0086. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

To access documents related to this notice see Section V, Further Information.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–73, issued to FirstEnergy Nuclear Operating Company (licensee) for operation of the Beaver Valley Power Station, Unit No. 2 (BVPS–2), located in Shippingport, Pennsylvania.

The proposed amendment would revise the BVPS–2 Technical Specifications to support the installation of high density fuel storage racks in the BVPS–2 spent fuel pool. The amendment application dated April 9, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML091210251), was supplemented by letters dated June 15, 2009 (ADAMS Accession No. ML091680614) and January 18, 2010. Access to these documents is discussed in Section V, Further Information. The January 18, 2010, letter and a portion of the June 15, 2009, letter contain sensitive unclassified non-safeguards information (SUNSI), and are not available to the public. See Section V, Further Information, and the Order providing instructions for requesting access to the withheld information.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The relevant accidents previously evaluated are limited to the fuel handling and criticality accidents.

The fuel storage racks are not a design basis accident initiator. The potential contribution to the applicable design basis accident (a fuel handling accident) has been evaluated by considering three types of fuel assembly drop scenarios. The three types of scenarios are a shallow drop, a deep drop and a fuel to fuel drop. The shallow drop postulates that the fuel assembly drops vertically and hits the top of a rack. The deep drop postulates that the fuel assembly falls through an empty storage cell impacting the rack baseplate. The fuel to fuel drop postulates that a fuel assembly drops on top of a stored fuel assembly in a rack. The structural damage to the impacted target is primarily dependent on the mass of the falling fuel assembly and the drop height. Since the fuel assembly mass and drop height are not significantly changed by the installation of the high density racks, the postulated structural damage to impacted targets are also not significantly changed due to the installation of the high density racks.

The physical limitations of the racks and the administrative and operational controls used to load fuel assemblies into the spent fuel pool ensure that fuel assemblies are stored in compliance with the applicable fuel storage requirements, both during and following the installation phase of the reracking project. These controls will remain in effect and will continue to protect against

criticality and fuel handling accidents during and following the installation phase of the reracking project. Therefore, there is no significant impact on the probability of fuel handling or criticality accidents.

The criticality analysis applicable to the existing racks has not changed from what was approved by Amendment 165 for BVPS–2 issued on March 27, 2008. The new criticality analysis defines new spent fuel storage requirements based on enrichment and burnup limits. The new analysis demonstrates that k_{eff} remains below 1.0 with zero soluble boron in the spent fuel pool, and that k_{eff} remains less than or equal to 0.95 for the entire pool with credit for soluble boron under non-accident and accident conditions with a 95% probability at a 95% confidence level. As a result potential consequences of accidents previously evaluated remain unchanged for either type of rack.

The proposed installation of the high density racks, and the coexistence of the existing and high density racks in the spent fuel pool during the installation phase, does not result in changes to the spent fuel pool cooling system and therefore the probability of a loss of spent fuel pool cooling is not increased. The consequences of a loss of spent fuel pool cooling were evaluated and found to not involve a significant increase as a result of the proposed changes. A thermal-hydraulic evaluation for the loss of spent fuel pool cooling was performed. The analysis determined that the minimum time to boil provides sufficient time for the operators to restore cooling or establish an alternate means of cooling following a complete loss of forced cooling. Therefore, the proposed change represents no significant increase in the consequences of loss of spent fuel pool cooling for either type of rack.

Therefore, the proposed installation of high density fuel storage racks and the resulting proposed Technical Specifications changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The relevant types of accidents previously evaluated are limited to criticality and fuel handling accidents. Although the new analysis will increase the maximum storage capacity, implementation of fuel loading requirements and fuel handling activities will continue to be performed under administrative and operational controls. The utilization of the additional storage capacity within the allowances of the revised analysis will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Other than the removal of the existing racks and installation of the high density racks, no new or different activities are introduced as a result of the proposed changes. The drop of a high density rack during the installation phase has been described and evaluated as part of this submittal. This evaluation produced acceptable results. The drop of an existing rack during its removal is bounded by this evaluation because a new rack is heavier than an existing rack. The supporting evaluation also considered dropping items into the fuel cask area or onto the cover that will be placed over the cask pit area during the installation of the new racks. All of the items to be installed in or over the fuel cask area weigh much less than a spent fuel cask, for which the fuel cask area was designed. As such, the drop of any of these items onto the floor of the fuel cask area would be bounded by a spent fuel cask drop. With respect to drops onto the fuel that will temporarily be stored in the fuel cask area, the fuel cask area cover is designed to withstand the load imposed by a rack striking it from above. Since the fuel cask area cover would not fail due to this event, there cannot be any impact on the fuel assemblies in the rack below it. The evaluation also produced acceptable results for dropping any of the three parts of the fuel cask area cover onto the fuel loaded into the rack in the fuel cask area.

Therefore the new activities introduced because of the reracking have been evaluated and been found to not create the possibility of a new or different kind of accident from any accident previously evaluated.

No changes are proposed to the spent fuel pool cooling system or makeup systems and therefore no new accidents are considered related to the loss of spent fuel pool cooling or makeup capability.

Therefore, the proposed installation of high density fuel storage racks and the resulting proposed Technical Specifications changes do not create the possibility of a new or different kind of accident from any previously evaluated for either type of rack.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The margin to safety with respect to analyzed accidents involves maintaining k_{eff} through fuel storage requirements and boron concentration controls in the spent fuel pool. The new criticality analysis demonstrates that k_{eff} remains below 1.0 with zero soluble boron, and that k_{eff} remains less than or equal to 0.95 for the entire pool with credit for soluble boron under non-accident and accident conditions with a 95% probability at a 95% confidence level. This is consistent with the current licensing basis of the BVPS–2 spent fuel pool.

The TSs controlling the water level or boron concentration of the spent fuel pool are not being changed by this license amendment request. Therefore, there is no significant change to the margin of safety attributed to the water level or the boron required when the spent fuel pool is fully flooded with borated water or the boron concentration required for accident or a boron dilution event for either type of rack.

One of the proposed changes to the TSs is being made to assure that the existing (Boraflex) racks and the high density (Metamic) racks are neutronically decoupled during the installation phase of the reracking project. This temporary requirement results in the existing and new criticality analyses both being valid during the installation phase. Following the completion of the installation of the high density racks, the new criticality analysis becomes the licensing basis of the BVPS–2 spent fuel pool.

The structural analysis of the high density racks, along with the evaluation of the spent fuel pool structure, indicates that the integrity of these structures will be maintained during and following installation of the high density racks. The previously performed structural analysis of the existing racks resulted in the same conclusion. Since the structural requirements are satisfied, the applicable safety margins are not significantly reduced for either type of rack.

The proposed change includes a coupon sampling program that will monitor the physical properties of the Metamic absorber material. The monitoring program provides a method of verifying that the neutron absorber assumptions used in the spent fuel pool criticality analyses remain valid.

Therefore, the proposed installation of high density fuel storage racks and the resulting proposed TSs changes do not involve a significant reduction in margin of safety for either type of rack.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. You may submit comments using any of the methods discussed under the **ADDRESSES** caption.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR Part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 10, 2010. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 10, 2010.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E–Filing)

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 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.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors." Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed together with a request for hearing/petition to intervene, filed in accordance with 10 CFR 2.309. If it is determined a hearing will be held, the presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time

available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart L apply.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

V. Further Information

Documents related to the proposed action 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 Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Search for these documents using the ADAMS accession numbers: the application for amendment dated April 9, 2009, (ML091210251); and the publically-available portions of the June 15, 2009, supplement (ML091680614), January 18, 2010, supplement (ML093430689). As discussed above in Section I., the January 18, 2010, supplement and a portion of the June 15, 2009, supplement contain SUNSI and are not publically available. Instructions for requesting access to these withheld documents are contained in the following Order.

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 by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR at 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Attorney for the licensee: David W. Jenkins, Assistant General Counsel, FirstEnergy Nuclear Operating Company, Mail Stop A–GO–18, 76 South Main Street, Akron, OH 44308.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E–Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this *5th* day of March 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–5252 Filed 3–10–10; 8:45 am]

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[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397; NRC–2010–0029]

Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF–21 for an Additional 20-Year Period Energy Northwest; Columbia Generating Station

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of operating license NPF–21, which authorizes Energy Northwest (EN) to operate the Columbia Generating Station (CGS) at 3486 megawatts thermal. The renewed license would authorize the applicant to operate CGS for an additional 20 years beyond the period specified in the current license. CGS is located near Richland, Washington. The current operating license expires on December 20, 2023.

EN submitted the application dated January 19, 2010, pursuant to Title 10 of the *Code of Federal Regulations,* Part 54 (10 CFR Part 54) to renew operating license NPF–21. A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on February 2, 2010 (75 FR 5353).

The Commission has determined that EN has submitted sufficient information in accordance with 10 CFR Sections 2.101, 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and the application is therefore acceptable for docketing. The Commission will retain the current Docket No. 50–397 for operating license No. NPF–21. The determination to accept the LRA for docketing does not constitute a determination that the renewed license should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated May 1996. In considering the LRA, the Commission must find that the applicable requirements of Subpart A of 10 CFR Part 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov.* If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR Parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the

following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners must jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

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 electronic information exchange, 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.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this **Federal Register** notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the

factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating license for CGS are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* the NRC's Web site while the application is under review. The application may be accessed in ADAMS through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Number ML100250668. As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.Resource*@nrc.gov.

The NRC staff has verified that a copy of the LRA is also available to local residents near the site at the Richland Public Library, 955 Northgate Drive, Richland, Washington 99352 and at the Kennewick Branch of Mid-Columbia Libraries, 1620 South Union Street, Kennewick, Washington 99338.

Dated at Rockville, Maryland, this 4th day of March 2010.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5278 Filed 3–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0097]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of draft regulatory guide, DG–1242, "Service Level I, II, and III Protective Coatings Applied To Nuclear Power Plants."

FOR FURTHER INFORMATION CONTACT: Bruce P. Lin, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7653 or e-mail *Bruce.Lin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Service Level I, II, and III Protective Coatings Applied to Nuclear Power Plants" is temporarily identified by its task number, DG–1242, which should be mentioned in all related correspondence. DG–1242 is proposed Revision 2 of Regulatory Guide 1.54, dated July 2000.

Protective coatings have been used extensively in nuclear power plants (NPPs) to protect the surfaces of facilities and equipment from corrosion and contamination from radionuclides and for wear protection during plant operation and maintenance activities. For plants that have a design basis that includes a commitment to RG 1.54, "Quality Assurance Requirements for Protective Coatings Applied to Water-Cooled Nuclear Power Plants," issued June 1973, the regulations cited above require that protective coatings be qualified and capable of surviving a design-basis accident without adversely affecting safety-related structures, systems, and components needed to mitigate the accident.

The NRC issued RG 1.54 to describe an acceptable method for complying with NRC quality assurance requirements for protective coatings applied to ferritic steels, stainless steel, zinc-coated (galvanized) steel, concrete, or masonry surfaces of water-cooled NPPs. The presumption was that protective coatings that met these guidelines would not degrade over the design life of the plant. However, operating history has shown that undesirable degradation, detachment, and other types of failures of coatings have occurred, as described in Generic Letter 98–04, "Potential for Degradation of the Emergency Core Cooling System and the Containment Spray System after a Loss-of-Coolant Accident because of Construction and Protective Coating Deficiencies and Foreign Material in Containment," dated July 14, 1998. Detached coatings from the substrate that are transported to emergency core cooling system intake structures may make those systems unable to satisfy the requirement in 10 CFR 50.46(b)(5) to provide long-term cooling.

II. Further Information

The NRC staff is soliciting comments on DG–1242. Comments may be accompanied by relevant information or supporting data and should mention DG–1242 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0097 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0097. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic

Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–1242 is available electronically under ADAMS Accession Number ML093410510. In addition, electronic copies of DG–1242 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.*

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0097.

Comments would be most helpful if received by May 12, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 4th day of March, 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–5225 Filed 3–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333; NRC–2010–0095]

James A. Fitzpatrick Nuclear Power Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," issued to Entergy Nuclear Operations, Inc. (the licensee), for the operation of the James A. FitzPatrick Nuclear Power Plant (JAFNPP) located in Oswego County, NY. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of Proposed Action

Regulatory Issue Summary (RIS) 2006–10 documents the NRC position on the use of operator manual actions as part of a compliance strategy to meet the requirements of 10 CFR Part 50, Appendix R, Section III.G.2. The NRC requires plants which credit manual actions for 10 CFR Part 50, Appendix R, Section III.G.2 compliance to obtain NRC approval for the manual action using the exemption process in accordance with the requirements of 10 CFR 50.12. In response to RIS 2006–10, the licensee requested this licensing action which would exempt the JAFNPP from the requirements of 10 CFR Part 50, Appendix R, Section III.G.2. The proposed exemption would allow operator manual action, in a safe area of the reactor building, that will prevent the failure of the systems in Fire Area 10 from affecting the ability to achieve and maintain hot shutdown conditions of the reactor as required by Title 10 of the *Code of Federal Regulations* Part 50, Appendix R, Section III.G.2.

The proposed action is in accordance with the licensee's application dated February 18, 2009, as supplemented by letters dated March 30, November 17, December 11, 2009, and January 19, 2010. Portions of letters dated February 18 and March 30, 2009, contain security related sensitive information, and are withheld from public disclosure in accordance with 10 CFR 2.390. Publicly available versions of the letters dated February 18, and March 30, 2009, are accessible electronically from the Agencywide Documents Access and Management System (ADAMS) with Accession Nos. ML090860980 and ML091320387, respectively. Also, the letters dated November 17, December 11, 2009, and January 19, 2010, are accessible electronically from ADAMS with Accession Nos. ML093270075, ML093520408, and ML100210195, respectively.

The Need for the Proposed Action

The proposed action is needed to allow the licensee an alternate method, not authorized in 10 CFR Part 50, to achieve and maintain hot shutdown conditions in the event of a fire that could disable electrical cables and equipment in Fire Area 10.

The criteria for granting specific exemptions from 10 CFR Part 50 Regulations are specified in 10 CFR 50.12. In accordance with 10 CFR 50.12(a)(1), the NRC is authorized to grant an exemption upon determining that the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the environmental impact of the proposed action. The staff has concluded that such actions would not adversely affect the environment. The proposed action would not result in an increased radiological hazard. There will be no change to the radioactive effluent releases that effect radiation exposures to plant workers and members of the public. The proposed action will be performed inside the reactor building. No changes will be made to plant structures or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided in the license exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the

application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the James A. FitzPatrick Nuclear Power Plant, Docket No. 50–333, dated March 1973 and "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding James A. FitzPatrick Nuclear Power Plant (NUREG–1437, Supplement 31) Final Report."

Agencies and Persons Consulted

In accordance with its stated policy and the requirements of 10 CFR 51.30(a)(2), on May 4, 2009, the NRC staff consulted with the New York State official, at the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The New York State official provided comments by e-mail dated June 12, 2009 (ADAMS Accession No. ML091690397).

One comment is related to Federal Regulations governing the exemption process. Regulations under 10 CFR 50.12, "Specific exemptions," do not include comment period and opportunity for a hearing. The public can pursue other avenues, such as petition for changes to the regulatory framework to allow hearings via the rulemaking process (10 CFR 2.802), or a petition for enforcement action (10 CFR 2.206) where stakeholders assert that license holders are not meeting regulatory requirements.

The other comments from the New York State addressed the security issues, the feasibility of the proposed manual action during a fire, and the cumulative effects of this change in conjunction with previous fire protection changes. Based on its review the NRC staff has determined that the comments do not pertain to the environmental impacts associated with the proposed exemption request and therefore, do not alter the staff's finding that there are no significant environmental impacts associated with the proposed exemption request. However, the comments related to the safety aspect of the exemption request will be appropriately considered in the NRC staff's safety evaluation.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 18, 2009, as supplemented by letters dated March 30, November 17, December 11, 2009, and January 19, 2010. Portions of letters dated February 18 and March 30, 2009, contain security related sensitive information, and are withheld from public disclosure in accordance with 10 CFR 2.390. Publicly available versions of the letters dated February 18, and March 30, 2009, are accessible electronically from the Agencywide Documents Access and Management System (ADAMS) with Accession Nos. ML090860980 and ML091320387, respectively. Also, the letters dated November 17, December 11, 2009, and January 19, 2010, are accessible electronically from ADAMS with Accession Nos. ML093270075, ML093520408, and ML100210195, respectively. Publicly available versions of the documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of March 2010.

For The Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5248 Filed 3–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397; NRC–2010–0029]

Energy Northwest; Notice of Intent To Prepare an Environmental Impact Statement and Conduct the Scoping Process for Columbia Generating Station

Energy Northwest has submitted an application for renewal of Facility Operating License No. NPF–21 for an additional 20 years of operation at the Columbia Generating Station (CGS). CGS is located in Benton County, Washington, approximately 12 miles northwest of Richland.

The current operating license for CGS expires on December 20, 2023. The application for renewal, dated January 19, 2010, was submitted pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 54, which included the environmental report (ER). A separate notice of receipt and availability of the application was published in the **Federal Register** on February 2, 2010 (75 FR 5353). A notice of acceptance for docketing of the application and opportunity for hearing regarding renewal of the facility operating licenses is also being published in the **Federal Register.** The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Energy Northwest submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. The ADAMS

Accession Number for the CGS ER is ML100250666. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* The CGS ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/columbia.html.* In addition, the ER is available to the public near the site at the Richland Public Library, 955 Northgate Drive, Richland, Washington 99352 and at the Kennewick Branch of Mid-Columbia Libraries, 1620 South Union Street, Kennewick, Washington 99338. Public comments and supporting materials related to this notice can be found at the Federal rulemaking Web site, *http://www.regulations.gov,* by searching on Docket ID NRC–2010–0029.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the NRC's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) related to the review of the application for renewal of the CGS operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS;

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used. The NRC invites the following entities to participate in scoping:

a. The applicant, Energy Northwest;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the CGS license renewal supplement to the GEIS. The scoping meetings will be held on April 6, 2010, and there will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 3:30 p.m. The second session will convene at 6 p.m. with a repeat of the overview portions of the meeting and will continue until 8 p.m., as necessary. Both sessions will be held at the Richland Public Library, 955 Northgate Drive, Richland, Washington 99352. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, Mr. Daniel Doyle, by telephone at 1–800–368–5642, extension 3748, or by e-mail at *Daniel.Doyle@nrc.gov* no later than March 30, 2010. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Doyle will need to be contacted no later than March 23, 2010, if special equipment or accommodations are needed to attend or present information at the public meeting so that the NRC staff can determine whether the request can be accommodated.

Members of the public may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0029 in the subject line of the comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because comments will not be edited to remove any identifying or contact information, the NRC cautions against including any information that the submitter does not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information and, therefore, they should not include any information in their comments that they do not want publicly disclosed.

Submit comments electronically via the Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0029. Address questions about NRC dockets to Carol Gallagher at

301–492–3668 or via e-mail at *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

To be considered in the scoping process, written comments should be postmarked by May 11, 2010. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

Dated at Rockville, Maryland, this 5th day of March 2010.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5270 Filed 3–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–263; NRC–2010–0045]

Northern States Power Company of Minnesota, Monticello Nuclear Generating Plant; Exemption

1.0 Background

Northern States Power Company of Minnesota (NSPM, the licensee) is the holder of Facility Operating License No. DPR–22, which authorizes operation of the Monticello Nuclear Generating Plant (MNGP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a General Electric boiling-water reactor located in Wright County, Minnesota.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from two of these new requirements that NSPM now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 3, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 3, 2009, letter contains security-related information and, accordingly, is not available to the public. The licensee submitted a redacted version of its exemption request on December 15, 2009, which is publicly available. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date for two specific items from the current March 31, 2010, deadline to June 30, 2011. Being granted this exemption for the two items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

This exemption would, as noted above, allow an extension from March 31, 2010, until June 30, 2011, to allow for temporary noncompliance with the new rule in two specified areas. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R.W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is, therefore, consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

MNGP's Schedule Exemption Request

The licensee provided detailed information in its November 3, 2009, request for exemption. It described a comprehensive plan to install equipment related to certain requirements in the new Part 73 rule and provided a timeline for achieving

full compliance with the new regulation. The submittal contains security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why the required changes to the site's security configuration cannot be completed by the deadline, and a timeline with critical path activities that will bring MNGP into full compliance by June 30, 2011. The timeline provides dates indicating when (1) construction will begin on various phases of the project (e.g., buildings, fences); (2) critical equipment will be ordered, installed, tested and become operational; and (3) anticipated impediments to construction such as planned refueling outages and winter weather conditions that may impair construction.

Notwithstanding the schedular exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. By June 30, 2011, MNGP will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to June 30, 2011, with regard to the specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The long-term benefits that will be realized when the modifications to the two specific items are complete justify exceeding the full compliance date in the case of this particular licensee. The security measures that the licensee needs additional time to implement are new requirements imposed by the March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC staff concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the requirement specified in the licensee's November 3, 2009, submittal, the licensee is required to be in full compliance by June 30, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism *(i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 6224, dated February 8, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of February, 2010.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–4526 Filed 3–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261; NRC–2010–0062]

Carolina Power & Light Company H. B. Robinson Steam Electric Plant, Unit No. 2; Exemption

1.0 Background

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. DPF–23, which authorizes operation of the H. B. Robinson Steam Electric Plant, Unit 2 (HBRSEP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Darlington County, South Carolina.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001 and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001 security orders. It is from 2 of these new requirements that HBRSEP now seeks an exemption from the March 31, 2010 implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 30, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 30, 2009, letter contains proprietary and security-related information that, accordingly, is not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is for two requirements that will be met by December 30, 2010, versus the March 31, 2010, deadline to. Being granted this exemption for the two items will allow the licensee to complete the modifications designed to meet or exceed the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10

CFR Part 73 when the exemptions are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, allows an extension from March 31, 2010, until December 30, 2010, to allow for temporary noncompliance with the new rule in two specific areas. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009 letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009 letter.

HBRSEP Schedule Exemption Request

The licensee provided detailed information in Attachment 1 of its November 30, 2009, letter requesting an exemption. It describes a comprehensive plan to upgrade the security capabilities of its HBRSEP site and provides a timeline for achieving full compliance with the new regulation. Attachment 1 contains proprietary information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why the site cannot be in compliance, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by December 30, 2010. The timeline provides dates indicating when construction will begin on various phases of the project and when critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedular exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. Furthermore, the security measures for which HBRSEP needs additional time to implement are in addition to those required by the security orders issued in response to the events of September 11, 2001. By December 30, 2010, HBRSEP will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to December 30, 2010, with regard to two specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the associated HBRSEP site modifications are complete justify exceeding the full compliance date with regard to the two specific requirements of 10 CFR 73.55 in the case of this particular licensee. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the two items specified in Attachment 1 of the licensee's letter dated November 30, 2009, the licensee is required to be in full compliance by December 30, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment 75 FR 8410, February 24, 2010.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5271 Filed 3–10–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302, License No. DPR–72; Docket No. 50–302, NRC–2010–0096]

Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Seminole Electric Cooperative, Inc., Crystal River Unit 3 Nuclear Generating Plant; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated December 5, 2009, Mr. Thomas Saporito (petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the licensee for the Crystal River Unit 3 Nuclear Generating Plant (CR–3). The petitioner requests that NRC take enforcement action against the licensee and issue a Confirmatory Order requiring that the licensee take the following actions at CR–3:

1. Physically remove the outer 10 inches of concrete surrounding the CR–3 containment building from the top of the containment building to the bottom of the containment building and encompassing 360 degrees around the entire containment building;

2. Test samples of the concrete removed from the CR–3 containment building for composition and compare the test results to a sample of concrete

from a similarly designed facility like the Florida Power and Light Company, Turkey Point Nuclear Plant;

3. Maintain the CR–3 in cold-shutdown mode until such time as the licensee can demonstrate full compliance with its NRC operating license for CR–3 within the safety margins delineated in the licensee's Final Safety Analysis Report (FSAR) and within the CR–3 site-specific technical specifications; and

4. Provide the public with an opportunity to intervene at a public hearing before the NRC Atomic Safety and Licensing Board to challenge any certification made by the licensee to NRC that it has reestablished full compliance with 10 CFR part 50 and the safety margins delineated in its FSAR and technical specifications.

In addition, during the January 7, 2010, conference call, the petitioner supplemented his December 5, 2009, petition with a verbal request to require the licensee to reform the containment building with additional concrete. The Petition Review Board (PRB) determined that this request supplements Item 1.

As the basis for the request:

1. The petitioner stated that during a maintenance activity performed under the direction and authorization of the licensee to cut an opening in the CR–3 containment building for access to replace steam generator units, the CR–3 containment building was discovered to have one or more separations between the poured concrete perimeter wall of the containment building and the horizontally installed tendons placed from top to bottom around the containment building within 10 inches of the outermost part of the 42-inch thick concrete perimeter wall of the containment building. To date, the licensee has not been able to determine the "root-cause" of this structural failure.

2. The petitioner stated that the licensee is currently engaged in conducting Impulse Testing of the remaining CR–3 containment building perimeter wall to determine if additional separations exist. However, the petitioner implies that the licensee's use of Impulse Testing is not sufficient to make such a determination. Notably, Impact Echo testing is used worldwide to determine concrete cracking and failures on public bridges and the like, but even this type of testing is not sufficient to fully validate the entirety of the CR–3 containment building. Moreover, the petitioner believes that even the use of destructive testing to make visual inspections of small areas of the CR–3 containment building is not sufficient to qualify the entirety of the containment building.

3. The petitioner stated that removal of 10 inches of concrete from the outer part of the 42-inch containment building wall from top to bottom and 360-degrees around would effectively expose the entirety of the surrounding 5¼-inch tendons and allow visual inspection of the inner side of the tendons to make certain that no separation between the tendons and the inner part of the concrete wall exist.

4. The petitioner stated that removal of 10-inches of concrete from the outer part of the 42-inch containment building wall from top to bottom and 360 degrees around would ensure for the best possible adhesion of a new concrete pour to the existing inner concrete perimeter wall of the containment building.

5. The petitioner stated that the licensee's FSAR requires that the CR–3 containment building be composed of a monolithic concrete perimeter wall. The petitioner believes that the only way the licensee can fully achieve compliance with its FSAR is to remove 10 inches of concrete from the outer part of the 42-inch containment building wall from top to bottom and 360 degrees around for proper visual inspect repair activities.

Moreover, during the January 7, 2010, conference call, the petitioner implied that a design flaw may have occurred, meaning the actual design of this containment structure has those tendons placed within 10 inches of the exterior part of that 42-inch thick concrete wall; the design may itself be flawed and subject the entire structure to other cracks, fissures, and voids that the licensee simply cannot detect with any type of instrumentation to make certain of their nonexistence. Therefore, the petitioner requested that the CR–3 containment building not only meet but exceed its original design basis as delineated in the FSAR.

The PRB discussed the petitioner's request during internal meetings and made the initial PRB recommendation. The PRB's initial recommendation is as follows:

- Item 1, as supplemented by the January 7, 2010, conference call, does not meet the NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions" (MD 8.11), criteria for further review under the 10 CFR 2.206 process in that sufficient facts have not been provided to support the request.
- Item 2 does not meet the MD 8.11 criteria for further review under the 10 CFR 2.206 process in that sufficient facts have not been provided to support the request.
- Item 3 meets the criteria established in MD 8.11 for acceptance into the 10 CFR 2.206 process for the petition under consideration.
- Item 4 does not meet the MD 8.11 criteria for further review under the 10 CFR 2.206 process in that the request has not specifically addressed an enforcement-related action.

On February 2, 2010, the petition manager informed the petitioner of the PRB's initial recommendation and offered him a second opportunity to address the PRB. On February 12, 2010, the petitioner declined the opportunity to address the PRB and did not provide any additional information for the PRB's consideration. Therefore, the PRB's initial recommendation, as discussed above, is the PRB's final recommendation.

NRC is treating Item 3 of the petitioner's request pursuant to 10 CFR 2.206, "Requests for Action under This Subpart." The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, NRC will take appropriate action on this petition within a reasonable time. A copy of the petition is available for inspection at the Commission's Public Document Room (PDR) located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available records related to this action will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr.Resource@nrc.gov.* The ADAMS accession number for the incoming petition request is ML093430702.

Dated at Rockville, Maryland, this 4th day of March, 2010.

For the U.S. Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5273 Filed 3–10–10; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12064 and # 12065]

West Virginia Disaster # WV–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for public assistance only for the state of West Virginia (FEMA–1881–DR), dated 03/02/2010.

Incident: Severe winter storm and snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

Effective Date: 03/02/2010.

Physical Loan Application Deadline Date: 05/03/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/02/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/02/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Boone, Calhoun, Clay, Fayette, Greenbrier, Kanawha, Mcdowell, Mingo, Nicholas, Pendleton, Pocahontas, Raleigh, Ritchie, Roane, Wyoming.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12064B and for economic injury is 12065B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5250 Filed 3–10–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12029 and #12030]

North Carolina Disaster #NC–00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA—1871—DR), dated 02/02/2010.

Incident: Severe Winter Storms and Flooding.

Incident Period: 12/18/2009 through 12/25/2009.

DATES: *Effective Date:* 03/02/2010.

Physical Loan Application Deadline Date: 04/05/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/02/2010

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of NORTH CAROLINA, dated 02/02/2010 is hereby amended to include the following areas as adversely affected by the disaster.

Primary Area: The eastern band of the Cherokee Indians Qualla Boundary Tribal Land. All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5254 Filed 3–10–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12062 and # 12063]

IOWA Disaster # IA–00023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1880–DR), dated 03/02/2010.

Incident: Severe Winter Storms.

Incident Period: 01/19/2010 through 01/26/2010.

Effective Date: 03/02/2010.

Physical Loan Application Deadline Date: 05/03/2010

Economic Injury (EIDL) Loan Application Deadline Date: 12/02/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/02/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Adair, Audubon, Calhoun, Carroll, Cass, Crawford, Guthrie, Harrison, Madison, Pottawattamie, Sac, Shelby.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12062B and for economic injury is 12063B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5256 Filed 3–10–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12066 and #12067]

District of Columbia Disaster #DC–00001

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for public assistance only for the District of Columbia (FEMA–1882–DR), dated 03/03/2010.

Incident: Severe winter storm and snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

Effective Date: 03/03/2010.

Physical Loan Application Deadline Date: 05/03/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/03/2010

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/03/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Disaster Area: District of Columbia.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12066B and for economic injury is 12067B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–5253 Filed 3–10–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29169; 812–13749]

The Chile Fund, Inc.; Notice of Application

March 8, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

APPLICANT: The Chile Fund, Inc. (the "Fund").

SUMMARY: *Summary of Application:* Applicant seeks an order that would permit in-kind repurchases of shares of the Fund held by certain affiliated shareholders of the Fund.

DATES: *Filing Dates:* The application was filed on January 29, 2010, and amended on March 5, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 29, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, c/o Aberdeen Asset Management Inc., 1735 Market Street, 32nd Floor, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-end management investment company. The Fund's investment objective is to seek total return by investing primarily in Chilean equity and debt securities. Applicant states that under normal circumstances it invests at least 80% of its net assets in Chilean equity and debt securities.[1] Shares of the Fund are listed and trade on the NYSE AMEX. Aberdeen Asset Management Investment Services Limited (the "Adviser"), an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser to the Fund.

2. The Fund proposes to repurchase 25% of its outstanding shares at 99% of net asset value ("NAV") on an in-kind basis with a *pro rata* distribution of the Fund's portfolio securities (with exceptions generally for odd lots, fractional shares, and cash items) (the "In-Kind Repurchase Offer"). The In-Kind Repurchase Offer will be made pursuant to section 23(c)(2) of the Act and conducted in accordance with rule 13e-4 under the Securities Exchange Act of 1934.

3. Applicant states that the In-Kind Repurchase Offer is designed to accommodate the needs of shareholders who wish to participate in the In-Kind Repurchase Offer and long-term shareholders who would prefer to remain invested in a closed-end investment vehicle. Under the In-Kind Repurchase Offer, only participating shareholders will pay U.S. Federal taxes

[1] Applicant states that as of September 30, 2009, approximately 99.4% of its assets were invested in equity securities of Chilean issuers, 96.9% of which were listed on the Santiago Stock Exchange.

on the gain on appreciated securities distributed in the In-Kind Repurchase Offer. Non-participating shareholders would avoid the imposition of a significant Federal tax liability, which would occur if the Fund sold the appreciated securities to make payments in cash. Applicant further states that the In-Kind Repurchase Offer's in-kind payments will minimize market disruption, while allowing the Fund to avoid a cascade of distributions, required to preserve its tax status, that would reduce the size of the Fund drastically. Applicant requests relief to permit any common shareholder of the Fund who is an "affiliated person" of the Fund solely by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares ("Affiliated Shareholder") to participate in the proposed In-Kind Repurchase Offer.

Applicant's Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing or selling any security or other property from or to the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person. Applicant states that to the extent that the In-Kind Repurchase Offer could be deemed the purchase or sale of securities by an Affiliated Shareholder, the transactions would be prohibited by section 17(a). Accordingly, applicant requests an exemption from section 17(a) of the Act to the extent necessary to permit the participation of Affiliated Shareholders in the In-Kind Repurchase Offer.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act.

3. Applicant asserts that the terms of the In-Kind Repurchase Offer meet the requirements of sections 17(b) of the Act. Applicant asserts that neither the Fund nor an Affiliated Shareholder has any choice as to the portfolio securities to be received as proceeds from the In-Kind Repurchase Offer. Instead, shareholders will receive their *pro rata* portion of each of the Fund's portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 ("Securities Act"), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-residents other than through qualified investment vehicles, or whose distributions would otherwise be contrary to applicable local laws, rules or regulations, and (c) certain portfolio assets that involve the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterparty to the transaction. Moreover, applicant states that the portfolio securities to be distributed in the In-Kind Repurchase Offer will be valued according to an objective, verifiable standard, and the In-Kind Repurchase Offer is consistent with the investment policies of the Fund. Applicant also believes that the In-Kind Repurchase Offer is consistent with the general purposes of the Act because the interests of all shareholders are equally protected and no Affiliated Shareholder would receive an advantage or special benefit not available to any other shareholder participating in the In-Kind Repurchase Offer.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Applicant will distribute to shareholders participating in the In-Kind Repurchase Offer an in-kind *pro rata* distribution of portfolio securities of applicant. The *pro rata* distribution will not include: (a) Securities that, if distributed, would be required to be registered under the Securities Act; (b) securities issued by entities in countries that restrict or prohibit the holdings of securities by non-residents other than through qualified investment vehicles, or whose distribution would otherwise be contrary to applicable local laws, rules or regulations; and (c) certain portfolio assets, such as derivative instruments or repurchase agreements, that involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction. Cash will be paid for that portion of applicant's assets represented by cash and cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, applicant will distribute cash in lieu of fractional shares and accruals on such securities. Applicant may round down or up the proportionate distribution of each portfolio security to the nearest round lot amount so as to eliminate an odd lot prior to distribution and will distribute the remaining value of the odd lot, if any, in cash. Applicant may also distribute a higher *pro rata* percentage of other portfolio securities to represent such fractional shares and odd lots.

2. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offer will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

3. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offer will be valued in the same manner as they would be valued for purposes of computing applicant's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on a public securities market, or, if the securities are not listed on an exchange or a public securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

4. Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the In-Kind Repurchase Offer occurs, the first two years in an easily accessible place, a written record of the In-Kind Repurchase Offer that includes the identity of each shareholder of record that participated in the In-Kind Repurchase Offer, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5235 Filed 3–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29168; File No. 812–13660]

Lincoln Variable Insurance Products Trust, et al.; Notice of Application

March 5, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF THE APPLICATION: The requested order would (a) permit certain registered open-end management investment companies that operate as "funds of funds" to acquire shares of certain registered open-end management investment companies and unit investment trusts ("UITs") that are within and outside the same group of investment companies as the acquiring investment companies, and (b) permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Lincoln Variable Insurance Products Trust ("Trust") and Lincoln Investment Advisors Corporation ("Adviser").

DATES: Filing Dates:

The application was filed on May 22, 2009, and amended on October 5, 2009, and February 2, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 30, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: 1300 South Clinton Street, Fort Wayne, Indiana 46802.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. The Trust is comprised of separate series ("Funds") that pursue distinct investment objectives and strategies. Shares of the Funds are not offered directly to the public. Shares of the Funds are offered to separate accounts that are registered as investment companies under the Act ("Registered Separate Accounts") or that are not registered under the Act ("Unregistered Separate Accounts," collectively with Registered Separate Accounts, "Separate Accounts") of affiliated and unaffiliated insurance companies (collectively, "Insurance Companies") as the underlying investment vehicles for the variable life insurance and variable annuity contracts ("Variable Contracts") issued by the Insurance Companies. Shares of the Funds are also offered to qualified pension and retirement plans.

2. The Adviser, a Tennessee corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to each of the Funds.

3. Applicants request an order to permit (a) a Fund that operates as a "fund of funds" (each a "Fund of Funds") to acquire shares of (i) registered open-end management investment companies that are not part of the same "group of investment companies," within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds ("Unaffiliated Investment Companies") and UITs that are not part of the same group of investment companies as the Fund of Funds ("Unaffiliated Trusts," together with the Unaffiliated Investment Companies, "Unaffiliated Funds"),[1] or (ii) registered open-end management companies or UITs that are part of the same group of investment companies as the Fund of Funds (collectively, "Affiliated Funds," together with the Unaffiliated Funds, "Underlying Funds") and (b) each Underlying Fund, any principal underwriter for the Underlying Fund, and any broker or dealer registered under the Securities Exchange Act of 1934 ("Broker") to sell shares of the Underlying Fund to the Fund of Funds.[2] Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

4. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the Act to permit any existing or future Fund of Funds that relies on section 12(d)(1)(G) of the Act ("Same Group Fund of Funds") and that otherwise complies with rule 12d1–2 to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[3]

5. Consistent with its fiduciary obligations under the Act, the board of directors or trustees ("Board") of each Same Group Fund of Funds will review the advisory fees charged by the Same Group Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Fund of Funds may invest.

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[1] Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices ("ETFs").

[2] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] Applicants request that the relief apply to each existing and future Fund and to each existing and future registered open-end management investment company or series thereof that is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser and which is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii)) as the Trust.

Applicants' Legal Analysis

Investments in Underlying Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit a Funds of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and an Underlying Fund, any principal underwriter for an Underlying Fund, and any Broker to sell shares of an Underlying Fund to a Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the terms and conditions of the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over the Unaffiliated Funds.[4] To limit the control that a Fund of Funds may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Fund of Funds Adviser, any person controlling, controlled by, or under common control with the Fund of Funds Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or any person controlling, controlled by, or under common control with the Fund of Funds Adviser (the "Advisory Group") from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds ("Subadviser"), any person controlling, controlled by or under common control with the Fund of Funds Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Subadviser or any person controlling, controlled by or under common control with the Fund of Funds Subadviser (the "Subadvisory Group"). Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, investment adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, Subadviser, or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the Act.

5. To further assure that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.[5]

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not "interested persons" (within the meaning of section 2(a)(19) of the Act) ("Independent Trustees"), will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Applicants also state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level.[6]

[4] A "Fund of Funds Affiliate" is the Adviser, any subadviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by, or under common control with any of those entities. An "Unaffiliated Fund Affiliate" is an investment adviser, sponsor, promoter, or principal underwriter of an Unaffiliated Fund, as well as any person controlling, controlled by, or under common control with any of those entities.

[5] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[6] Applicants represent that each Fund of Funds will represent in the Participation Agreement that no Insurance Company sponsoring a Registered Separate Account funding Variable Contracts will be permitted to invest in the Fund of Funds unless the Insurance Company has certified to the Fund of Funds that the aggregate of all fees and charges

Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD ("NASD Conduct Rule 2830"), will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[7]

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 12 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Fund of Funds and the Affiliated Funds might be deemed to be under common control of the Adviser and therefore affiliated persons of one another. Applicants also state that a Fund of Funds and the Unaffiliated Funds might be deemed to be affiliated persons of one another if the Fund of Funds acquires 5% or more of an Unaffiliated Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.[8] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of the Underlying Fund.[9] Applicants state that the proposed transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act.

Other Investments by Same Group Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that a Same Group Fund of Funds may invest a portion of its assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Funds of Funds to invest in Other Investments. Applicants assert that permitting Same Group Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Investments by Funds of Funds in Underlying Funds

Applicants agree that the relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of an Advisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within

associated with each contract that invests in the Fund of Funds, including fees and charges at the Separate Account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Company.

[7] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[8] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by a Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[9] Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Unaffiliated Fund. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) of the Act for those in-kind transactions.

the meaning of section 2(a)(9) of the Act. The members of the Subadvisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Advisory Group or a Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Fund, then the Advisory Group or the Subadvisory Group (except for any member of the Advisory Group or Subadvisory Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadvisory Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its Variable Contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its Variable Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that its Adviser and any Subadviser(s) to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s) or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment

Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under such advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding and the basis upon which the finding was made will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

Other Investments by Same Group Funds of Funds

Applicants agree that the relief to permit Same Group Funds of Funds to invest in Other Investments shall be subject to the following condition:

13. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Same Group Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5213 Filed 3–10–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61662; File No. S7–05–09]

Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments

March 5, 2010.

I. Introduction

The Securities and Exchange Commission ("Commission") has taken multiple actions [1] designed to address concerns related to the market in credit default swaps ("CDS").[2] The over-the-

[1] *See generally* Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009) and Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) (hereinafter, the "March 2009 ICE Trust Order") and Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009) (hereinafter, the "December 2009 ICE Trust Order," collectively with the March 2009 ICE Trust Order, the "2009 ICE Trust Orders") (temporary exemptions in connection with CDS clearing by ICE US Trust LLC (now "ICE Trust U.S. LLC")); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. *See* Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS. *See* Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset

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counter ("OTC") market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties ("CCPs") for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements ("non-excluded CDS"), the Commission's action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits by helping to promote efficiency and reduce risk in the CDS market, by contributing to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

In the 2009 ICE Trust Orders, the Commission provided temporary conditional exemptions to ICE Trust U.S. LLC ("ICE Trust") and certain other parties to permit ICE Trust to clear and settle CDS transactions.[6] The current exemptions are scheduled to expire on March 7, 2010, and ICE Trust has requested that the Commission extend those exemptions.[7]

Based on the facts presented and the representations made by ICE Trust,[8] and for the reasons discussed in this Order and subject to certain conditions, the Commission is extending each of the existing exemptions connected with CDS clearing by ICE Trust: The temporary conditional exemption granted to ICE Trust from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions; the temporary conditional exemption of ICE Trust and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by ICE Trust; the temporary conditional exemption of eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by ICE Trust; the temporary exemption of ICE Trust clearing members and others from broker-dealer registration requirements and related requirements in connection with CDS clearing by ICE Trust (including clearing of customer CDS transactions); and the temporary exemption from certain Exchange Act requirements granted to registered broker-dealers. This extension is temporary, and the exemptions will expire on November 30, 2010.

II. Discussion

In its request for an extension, ICE Trust represents that, other than as discussed in its request, there have been no material changes to the operations of ICE Trust and the representations in the 2009 ICE Trust Orders remain true in all material respects.[9] These

or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[3] *See generally* actions referenced in note 1, *supra.*

[4] 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of "security" under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a "swap agreement" as "any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act . . .) . . . the material terms of which (other than price and quantity) are subject to individual negotiation." 15 U.S.C. 78c note.

[5] *See generally* actions referenced in note 1, *supra.*

[6] For purposes of this Order, "Cleared CDS" means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) The reference entity, the issuer of the reference security, or the reference security is one of the following: (A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Government National Mortgage Association ("Ginnie Mae"); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). *See* definition in paragraph III.(f)(1) of this Order. As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. *See* text at note 4, *supra.*

[7] *See* Letter from Kevin McClear, ICE Trust, to Elizabeth Murphy, Secretary, Commission, Mar. 5, 2010 ("March 2010 Request").

[8] *See id.* The exemptions we are granting today are based on all of the representations made by ICE Trust, which incorporate representations made by or on behalf of ICE Trust as part of the requests that preceded our earlier exemptions addressing CDS clearing by ICE Trust. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

[9] *See* March 2010 Request, *supra* note 7. In its present request, ICE Trust states that, consistent with an earlier representation, it has adopted a requirement that clearing members subject to the framework are regulated by: (i) A signatory to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation.

ICE Trust also states that it has commenced implementation of certain changes to the end-of-day settlement price process described in the December 2009 ICE Trust Order in connection with the clearing of single-name CDS. Specifically, ICE Trust has implemented required trading for single-name CDS on a daily basis, rather than the random-day basis that applies to index CDS, for the 100 basis point coupon for certain single-name CDS (and one tenor). As ICE Trust rolls out additional single names, it expects to include the additional single names in the required trading process. ICE Trust also anticipates including other coupons and tenors commencing in March 2010.

Under ICE Trust's process for required trading for single-name CDS on a daily basis, on each business day, ICE Trust requires trading for a set percentage (initially set at approximately 10%) of the randomly selected cleared single-name reference entities. ICE Trust applies a filter that first selects for required trading the most traded "cross points" on a curve generated for each such reference entity. ICE Trust will also apply a notional ceiling with respect to the amount of required trades in CDS on the selected reference entities for any given day. The current notional ceiling is ten million (10,000,000) dollars

representations are discussed in detail in the December 2009 ICE Trust Order.

A. ICE Trust's CDS Clearing Activities to Date

ICE Trust has cleared proprietary CDS transactions of its clearing members since March 9, 2009, and has cleared CDS transactions involving its clearing members' clients since December 14, 2009. As of February 11, 2010, ICE Trust had cleared approximately $3.82 trillion notional amount of CDS contracts based on indices of securities.[10]

On December 29, 2009 ICE Trust commenced clearing CDS contracts based on individual reference entities or securities. As of February 11, 2010, ICE Trust had cleared approximately $18.86 billion notional amount of CDS contracts based on individual reference entities or securities.[11]

B. Extended Temporary Conditional Exemption from Clearing Agency Registration Requirement

On December 4, 2009, in connection with its efforts to facilitate the establishment of one or more central counterparties ("CCP") for Cleared CDS, the Commission issued the December 2009 ICE Trust Order, conditionally extending the Commission's March 2009 ICE Trust Order, which conditionally exempted ICE Trust from clearing agency registration under Section 17A of the Exchange Act on a temporary basis. Subject to the conditions in the December 2009 ICE Trust Order, ICE Trust is permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The December 2009 ICE Trust Order expires on March 7, 2010.

In the 2009 ICE Trust Orders, the Commission recognized the need to ensure the prompt establishment of ICE Trust as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. Accordingly, the temporary exemptions in the 2009 ICE Trust Orders were subject to a number of conditions designed to enable Commission staff to monitor ICE Trust's clearance and settlement of CDS transactions.[12] Moreover, the temporary exemptions in the 2009 ICE Trust Orders in part were based on ICE Trust's representation that it met the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and IOSCO report entitled: *Recommendation for Central Counterparties* ("RCCP").[13] The RCCP establishes a framework that requires a CCP to have: (i) The ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions—including customer CDS transactions—through a temporary conditional exemption from Section 17A will continue to provide important risk management and systemic benefits by avoiding an interruption in those CCP clearance and settlement services. Any interruption in CCP clearance and settlement services for CDS transactions would eliminate in the future the benefits ICE Trust provides to the non-excluded CDS market. Accordingly, and consistent with our findings in the 2009 ICE Trust Orders and for the reasons described herein, we find pursuant to Section 36 of the Exchange Act[14] that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, until November 30, 2010, the relief provided from the clearing agency registration requirements of Section 17A by the 2009 ICE Trust Orders.

Our action today balances the aim of facilitating ICE Trust's continued service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The temporary exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on the CDS market. In particular, the Commission will seek to assure itself that ICE Trust does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data, and the access to clearing services by independent CDS exchanges or CDS trading platforms.[15]

This temporary extension of the December 2009 ICE Trust Order also is designed to assure that—as represented in ICE Trust's request—information will continue to be available to market participants about the terms of the CDS cleared by ICE Trust, the creditworthiness of ICE Trust or any guarantor, and the clearance and

per single name reference entity (a reference entity includes all of the coupons and tenors). The notional ceiling for the most traded "cross point" on the tenor curve of a particular reference entity is five million (5,000,000) dollars. The notional ceilings for the other "cross points" on the tenor curve is two million five hundred thousand (2,500,000) dollars.

In addition to the procedures implementing required trades on random days for CDS indices and the required trade process described above with respect to single name CDS, ICE Trust regularly monitors the quality of the respective firm's end-of-day price submissions. On a regular basis, ICE Trust: (1) Performs a statistical analysis with respect to the dispersion of price submissions; (2) reviews the number of "Advisory Trades" for each firm; and (3) reviews any instances where firms have either submitted late prices or failed to submit prices. When appropriate in the view of ICE Trust management, it contacts firms to discuss the quality of their price submissions. In addition, on a regular basis, ICE Trust management reviews the default spread widths and the daily trade results ("Advisory" and "Firm") with the ICE Trust Trading Advisory Committee and the ICE Trust Risk Committee.

[10] *See https://www.theice.com/marketdata/reports/ReportCenter.shtml.*

[11] *See https://www.theice.com/marketdata/reports/ReportCenter.shtml.*

[12] *See* Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) and Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009).

[13] The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the Commodity Futures Trading Commission.

[14] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[15] ICE Trust has no rule requiring an executing dealer to be a clearing member. As an operational matter, ICE Trust currently has one authorized trade processing platform for submission of client CDS transactions, ICE Link. Currently, ICE Link does not have a mechanism by which a non-member dealer could submit a transaction for clearing at ICE Trust. However, ICE Trust Clearing Rule 314 provides for open access to ICE Trust's clearing systems for all reasonably qualified execution venues and trade processing platforms. ICE Trust has represented that it remains committed to work with reasonably qualified execution venues and trade processing platforms to facilitate functionality for submission of trades by non-member dealers if there is interest in such functionality. See March 2010 Request, *supra* note 7.

settlement process for CDS.[16] The Commission believes continued operation of ICE Trust consistent with the conditions of this Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market for CDS that is not centrally cleared.

This temporary extension of the December 2009 ICE Trust Order is subject to a number of conditions that are designed to enable Commission staff to continue to monitor ICE Trust's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that ICE Trust: (i) Make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) provide information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records and personnel related to its Cleared CDS clearance and settlement services; (iv) notify the Commission about material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing ICE Trust's Cleared CDS clearance and settlement services; (v) provide the Commission with changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements[17] and its annual audited financial statements prepared by independent audit personnel; and (vii) report all significant systems outages to the Commission.

In addition, this temporary extension of the December 2009 ICE Trust Order is conditioned on ICE Trust, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Trust.[18]

C. Extended Temporary Conditional Exemption From Exchange Registration Requirements

When we initially provided exemptions in connection with CDS clearing by ICE Trust, we granted a temporary conditional exemption to ICE Trust from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with ICE Trust's calculation of mark-to-market prices for open positions in Cleared CDS. We also temporarily exempted ICE Trust participants from the prohibitions of Section 5 to the extent that they use ICE Trust to effect or report any transaction in Cleared CDS in connection with ICE Trust's calculation of mark-to-market prices for open positions in Cleared CDS. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities exchanges,[19] while Section 6 provides the procedures for registering as a national securities exchange.[20]

We granted these temporary exemptions to facilitate the establishment of ICE Trust's end-of-day settlement price process. ICE Trust had represented that in connection with its clearing and risk management process it would calculate an end-of-day settlement price for each Cleared CDS in which an ICE Trust participant has a cleared position, based on prices submitted by the participants. As part of this mark-to-market process, ICE Trust has periodically required its clearing members to execute certain CDS trades at the price at which certain quotations of the clearing members cross. ICE Trust represents that it wishes to continue periodically requiring clearing members to execute certain CDS trades in this manner.

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to facilitate continued CDS clearing by ICE Trust. Consistent with that finding—and in reliance on ICE Trust's representation that the end-of-day settlement pricing process, including the periodically required trading, is integral to its risk management—we further find that it is necessary or appropriate in the public interest, and is consistent with the protection of investors that we exercise our authority under Section 36 of the Exchange Act to extend, until November 30, 2010, ICE Trust's temporary exemption from Sections 5 and 6 of the Exchange Act in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, and ICE Trust clearing members' temporary exemption from Section 5 with respect to such trading activity.

The temporary exemption for ICE Trust will continue to be subject to three conditions. First, ICE Trust must report the following information with respect to its calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

- The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and
- The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index.

Second, ICE Trust must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information. Such safeguards and procedures shall include: (a) Limiting access to the

[16] The Commission believes that it is important in the CDS market, as in the market for securities generally, that parties to transactions should have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. *See generally* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.*

[17] *See* Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (November 16, 1989), File No. S7–29–89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7–12–91.

[18] As a CCP, ICE Trust collects and processes information about CDS transactions, prices, and positions. Public availability of such information can improve fairness, efficiency, and competitiveness in the market. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indices, potentially improving the efficiency and effectiveness of the securities markets.

[19] In particular, Section 5 states:

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange * * * to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration * * * by reason of the limited volume of transactions effected on such exchange. * * *

15 U.S.C. 78e.

[20] 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

confidential trading information of participants to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (b) establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed.

Third, ICE Trust must comply with the conditions to the temporary exemption from Section 17A of the Exchange Act in this Order, given that this exemption is granted in the context of our goal of continuing to facilitate ICE Trust's ability to act as a CCP for non-excluded CDS, and given ICE Trust's representation that the end-of-day settlement pricing process, including the periodically required trading, is integral to its risk management.

D. Extended Temporary Conditional General Exemption for ICE Trust and Certain Eligible Contract Participants

As we recognized when we initially provided temporary exemptions in connection with CDS clearing by ICE Trust, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to those provisions.[21]

As a result, we concluded that it is appropriate in the public interest and consistent with the protection of investors to apply temporarily substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. Consistent with that conclusion, we temporarily exempted ICE Trust, and certain members and eligible contract participants, from a number of Exchange Act requirements, subject to certain conditions, while excluding certain enforcement-related and other provisions from the scope of the exemption.

We believe that continuing to facilitate the central clearing of CDS transactions by ICE Trust through this type of temporary exemption will provide important risk management benefits and systemic benefits. We also believe that facilitating the central clearing of customer CDS transactions, subject to the conditions in this Order, will provide an opportunity for the customers of ICE Trust clearing members to control counterparty risk.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until November 30, 2010 from certain requirements under the Exchange Act.

As before, this temporary conditional exemption applies to ICE Trust and to any eligible contract participants[22]—including any ICE Trust clearing member—other than eligible contract participants that are self-regulatory organizations or eligible contract participants that are registered brokers or dealers.[23]

As before, under this temporary conditional exemption, and solely with respect to Cleared CDS, those persons generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, those persons would still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[24] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions would remain applicable.[25] In this way, the temporary conditional exemption would apply the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps.

Consistent with the December 2009 ICE Trust Order exemptions, this temporary conditional exemption does not extend to: The exchange registration requirements of Exchange Act Sections 5 and 6;[26] the clearing agency registration requirements of Exchange Act Section 17A; the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[27] the broker-dealer registration requirements of Section 15a(1)[28] and the other requirements of the Exchange Act, including paragraphs (4) and (6) of Section 15(b),[29] and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission; or certain provisions related to government securities.[30]

[21] While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *See* (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u–1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[22] This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

[23] A separate temporary exemption addresses the Cleared CDS activities of registered broker-dealers. *See* Part II.F, *infra.* Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

[24] *See* note 40, *infra.*

[25] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

[26] These are subject to a separate temporary class exemption. *See* note 1, *supra.* A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." *See* Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the mark-to-market process of ICE Trust, discussed above, at note 19 and accompanying text.

[27] 15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. *See* note 1, *supra.*

[28] 15 U.S.C. 78o(a)(1).

[29] Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations.

[30] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o–5, and its underlying rules and regulations. The exemption also does not extend to

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As before, ICE Trust clearing members must be in material compliance with ICE Trust rules to be eligible for this temporary conditional exemption from Exchange Act requirements. ICE Trust clearing members that participate in the clearing of Cleared CDS transactions on behalf of other persons annually must provide a certification to ICE Trust that attests to whether the clearing member is relying on the temporary conditional exemption from broker-dealer related requirements described below.[31]

E. Conditional Temporary Exemption From Broker-Dealer Related Requirements for Certain Clearing Members of ICE Trust and Others

In the December 2009 ICE Trust Order, we granted a conditional temporary exemption from particular Exchange Act requirements to certain clearing members of ICE Trust, and to certain eligible contract participants, in connection with CDS cleared on ICE Trust. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[32] Certain reporting and other requirements of the Exchange Act could apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

In granting that exemption, we noted that it is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers.[33] We recognized, however, that requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in customer CDS transactions, to the detriment of the markets and market participants generally. We concluded that those factors, along with certain representations of ICE Trust,[34] argued in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries, conditioned on requiring the intermediaries to take reasonable steps to help increase the likelihood that their customers would be protected in the event the intermediary became insolvent, even if those safeguards are as not as strong as those required of registered broker-dealers.

As a result, and solely with respect to Cleared CDS, we provided a temporary conditional exemption from the broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (other than paragraphs (4) and (6) of Section 15(b)[35]) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission, to: (i) ICE Trust clearing members other than registered broker-dealers; and (ii) any eligible contract participant, other than a registered broker-dealer, that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons.[36]

That exemption was subject to a number of conditions. For ICE Trust clearing members that receive or hold funds or securities of U.S. persons (or who receive or hold funds or securities of any person in the case of a U.S. clearing member)—other than for an affiliate that controls, is controlled by, or is under common control with the clearing member—in connection with Cleared CDS, these included a condition requiring the clearing member, as promptly as practicable after receipt, to transfer such funds and securities (other than those promptly returned to such other persons) to either the Custodial Client Omnibus Margin Account at ICE Trust or to an account held by a third-party custodian. Additional related conditions addressed the types of permissible arrangements for holding collateral at a third-party custodian, and permissible custodians.[37]

related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. *See* Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

[31] To the extent we extend this temporary conditional exemption and include the same type of certification requirement, the clearing member then would annually renew the certification.

This condition requiring clearing members to convey information to ICE Trust as a repository for regulators, and other conditions of this Order that require clearing members or others to convey information (*e.g.,* an audit report related to the clearing member's compliance with exemptive conditions) to ICE Trust, does not impose upon ICE Trust any independent duty to audit or otherwise review that information. These conditions also do not impose on ICE Trust any independent fiduciary or other obligation to any customer of a clearing member.

[32] 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," but excludes certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account," but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a "bank" as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

[33] Registered broker-dealers are required to segregate assets held on behalf of customers from proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. Absent such segregation, collateral could be used by an intermediary to fund its own business, and could be attached to satisfy the intermediary's debts were it to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs, and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

[34] We noted that in granting the temporary exemption, we also relied on ICE Trust's representation that before offering the Non-Member Framework, it will adopt a requirement that non-U.S. clearing members subject to the framework are regulated by: (i) A signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation. We further noted that non-U.S. clearing members that do not meet these criteria would not be eligible to rely on this exemption.

[35] As noted above, *see* note 29, *supra,* Exchange Act Sections 15(b)(4) and 15(b)(6) grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while the exemption we granted from broker-dealer requirements generally extended to persons that act as broker-dealers in the market for Cleared CDS (potentially including inter-dealer brokers that do not hold funds or securities for others), such persons may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act.

In addition, such persons may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6) and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[36] In some circumstances, an eligible contract participant that does not hold customer funds or securities nonetheless may act as a dealer in securities transactions, or as a broker (such as an inter-dealer broker).

[37] Other conditions of this exemption precluded the clearing of CDS transaction for natural persons, required certain risk disclosures to customers, required the clearing member also must annually provide ICE Trust with a self-assessment that it is in compliance with the requirements along with a report by the clearing member's independent third-party auditor that attests to that assessment, and required the clearing member to agree to provide the Commission with access to information related to Cleared CDS transactions.

These conditions requiring customer collateral to be segregated from clearing members address only the initial margin that customers post in connection with Cleared CDS. In the December 2009 ICE Trust Order we noted, however, that we would evaluate the protections afforded to customers' mark-to-market profits associated with Cleared CDS positions, and consider the potential benefits of requiring clearing members to segregate customers' variation margin in connection with Cleared CDS positions.

As before, we are required to balance the goals of promoting the central clearing of customer CDS transactions against the goal of protecting customers, and to be mindful that these conditions cannot provide legal certainty that customer collateral in fact would be protected in the event an ICE Trust clearing member were to become insolvent. We believe that the segregation framework set forth in our earlier order represents a reasonable step to help protect the collateral posted by customers of ICE Trust's clearing members from the threat of loss in the event of clearing member insolvency.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant a conditional exemption until November 30, 2010, with respect to certain Exchange Act requirements related to broker-dealers.[38] As before, this exemption is available to ICE Trust clearing members other than registered broker-dealers, and to any eligible contract participant, other than a registered broker-dealer, that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons.[39] As before, and solely with respect to Cleared CDS, those persons temporarily will be exempt from the broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (other than paragraphs (4) and (6) of Section 15(b)) and the rules and regulation thereunder that apply to a broker or dealer that is not registered with the Commission.

As before, for all ICE Trust clearing members—regardless of whether they receive or hold customer collateral in connection with Cleared CDS—this temporary exemption is conditioned on the clearing member being in material compliance with ICE Trust's rules, as well as on the clearing member being in compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

Additional conditions apply to ICE Trust clearing members that receive or hold funds or securities of U.S. persons (or that receive or hold funds or securities of any person in the case of a U.S. clearing member)—other than for an affiliate that controls, is controlled by, or is under common control with the clearing member—in connection with Cleared CDS. For those ICE Trust clearing members, this temporary exemption is conditioned on the customer not being a natural person, and on the clearing member providing certain risk disclosures to the customer.[40]

In addition, under this revised temporary exemption, such clearing members must, as promptly as practical after receipt, transfer such funds and securities—other than those promptly returned to such other person—to either the Custodial Client Omnibus Margin Account at ICE Trust[41] or an account held by a third-party custodian, as described below.

As before, collateral that is held at a third-party custodian must either be held: (1) In the name of the customer, subject to an agreement in which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in the account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or (2) in an omnibus account for which the clearing member maintains daily records as to the amount owing to each customer, and which is subject to an agreement between the clearing member and the custodian specifying: (i) That all account assets are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other accounts that the clearing member maintains with the custodian; (ii) that the account assets may not be used as security for a loan to the clearing member by the custodian, and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and (iii) that the assets may not otherwise be pledged or rehypothecated by the clearing member or the custodian.[42] Under either approach, the third-party custodian cannot be affiliated with the clearing member.[43] Moreover, if the third-party custodian is a U.S. entity, it must be a

[38] As before, in granting this relief we are relying on representations by ICE Trust that non-U.S. clearing members that provide their customers with access to CDS clearing on ICE Trust are regulated by: (i) A signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation. Non-U.S. clearing members that do not meet these criteria would not be eligible to rely on this exemption.

[39] In some circumstances, an eligible contract participant that does not hold customer funds or securities nonetheless may act as a dealer in securities transactions, or as a broker (such as an inter-dealer broker).

Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant under the analysis used for determining whether certain persons would be considered "customers" of a broker-dealer under Exchange Act Rule 15c3–3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. See Exchange Act Section 3A(b)(4).

[40] The clearing member must disclose that it is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply, that the insolvency law of the applicable jurisdiction may affect the customer's ability to recover funds and securities or the speed of any such recovery, and (if applicable) that non-U.S. members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons.

[41] Cash collateral transferred to ICE Trust may be invested in "Eligible Custodial Assets," as defined in ICE Trust's "Custodial Asset Policies." Also, collateral transferred to ICE Trust may be held at a subcustodian.

[42] We do not contemplate that either of these approaches involving the use of a third-party custodian would interfere with the ability of a clearing member and its customer to agree as to how any return or losses earned on those assets would be distributed between the clearing member and its customer.

Also, the restriction in both approaches on the clearing member's and the custodian's ability to rehypothecate these customer funds and securities does not preclude that collateral from being transferred to ICE Trust as necessary to satisfy variation margin requirements in connection with the customer's CDS position.

[43] For purposes of the Order, an "affiliated person" of a clearing member mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with a clearing member; ownership of 10 percent or more of an entity's common stock will be deemed prima facie control of that entity. *See* definition in paragraph III.(f)(2) of this Order. This standard is analogous to the standard used to identify affiliated persons of broker-dealers under Exchange Act Rule 15c3–3(a)(13), 17 CFR 240.15c3–3(a)(13).

bank (as that term is defined in Section 3(a)(6) of the Exchange Act), have total regulatory capital of at least $1 billion,[44] and have been approved to engage in a trust business by an appropriate regulatory agency. A custodian that is not a U.S. entity must have regulatory capital of at least $1 billion,[45] and must provide the clearing member, the customer and ICE Trust with a legal opinion providing that the account assets are subject to regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial assets in the event of the custodian's insolvency, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency. Also, cash collateral posted with the third-party custodian may be invested in other assets, consistent with the investment policies that govern collateral held at ICE Trust.[46] Finally, a clearing member that uses a third-party custodian to hold customer collateral must notify ICE Trust of that use.

As before, to the extent there is any delay in the clearing member transferring such funds and securities to ICE Trust or a third-party custodian,[47] the clearing member must effectively segregate the collateral in a way that, pursuant to applicable law, could reasonably be expected to effectively protect the collateral from the clearing member's creditors. The clearing member may not permit customers to "opt out" of such segregation even if applicable regulations or laws otherwise would permit such "opt out."

Also, as before, this temporary exemption is conditioned on clearing member compliance with a self-assessment and audit requirement,[48] and on the clearing member's agreement to provide the Commission with access to information related to Cleared CDS transactions.[49]

As we discussed in the December 2009 ICE Trust order, requiring clearing members that receive or hold customer collateral to satisfy such conditions will not guarantee that a customer would receive the return of its collateral in the event of a clearing member's insolvency, particularly in light of the fact-specific nature of the insolvency process and the multiplicity of insolvency regimes that may apply to ICE Trust's members clearing for U.S. customers. We believe, however, that these are reasonable steps for increasing the likelihood that customers would be able to access collateral in such an insolvency event. We also recognize that these customers generally may be expected to be sophisticated market participants that should be able to weigh the risks associated with entering into arrangements with intermediaries that are not registered broker-dealers, particularly in light of the disclosure required as a condition to this temporary exemption.

F. Extended Temporary General Exemption for Certain Registered Broker-Dealers

The 2009 ICE Trust Orders included limited exemptions from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by ICE Trust through targeted exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this temporary registered broker-dealer exemption from certain Exchange Act requirements until November 30, 2010.[50]

Consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. As discussed above, we are not excluding registered broker-dealers from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[51] As above, and

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[44] In particular, custodians that are U.S. entities must have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency of at least $1 billion. The term "appropriate regulatory agency" is defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34).

[45] Custodians that are non-U.S. entities must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority of at least $1 billion. The term "foreign financial regulatory authority" is defined in Section 3(a)(52) of the Exchange Act, 15 U.S.C. 78c(a)(52).

[46] *See* note 41, *supra*.

[47] This provision is intended to address short-term technology or operational issues. ICE Trust rules require collateral to be transferred promptly on receipt, with the expectation that margin would be transferred on the same business day.

[48] In particular, to facilitate compliance with the segregation practices that are required as a condition to this temporary exemption, the clearing member must annually provide ICE Trust with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment. The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.

As the self-assessment is intended to serve as the basis for the third-party auditor's report, we expect the self-assessment to be generally contemporaneous with that report.

[49] Specifically, to support these segregation practices and enhance the ability to detect and deter circumstances in which clearing members fail to segregate customer collateral consistent with the exemption, this temporary exemption is conditioned on the clearing member agreeing to provide the Commission with access to information related to Cleared CDS transactions. This requirement is consistent with a requirement in Exchange Act Rule 15a–6(a)(3)(i)(B), which exempts certain foreign broker-dealers from registering with the Commission. *See* Exchange Act Rule 15a–6(a)(3)(i)(B).

Under this condition, the clearing member would provide the Commission (upon request and subject to agreements reached between the Commission or the U.S. Government and an appropriate foreign securities authority, *see* Section 3(a)(50) of the Exchange Act, 15 U.S.C. 78c(a)(50)), with information or documents within the clearing member's possession, custody, or control, as well as testimony of clearing member personnel and assistance in taking the evidence of other persons, that relates to Cleared CDS transactions. If, after the clearing member has exercised its best efforts to provide this information (including requesting the appropriate governmental body and, if legally necessary, its customers), the clearing member nonetheless is prohibited from providing the information by applicable foreign law or regulations, this temporary conditional exemption would no longer be available to the clearing member.

Consistent with the discussion above as to the loss of an exemption due to an underlying representation no longer being accurate, *see* note 8, *supra*, if a clearing member were to lose the benefit of this exemption due to the failure to provide information to the Commission as the result of a prohibition by an applicable foreign law or regulation, the legal status of existing open positions in non-excluded CDS associated with those clearing members and its customers would remain unchanged, but the clearing member could not establish new CDS positions pursuant to the exemption.

[50] The temporary exemptions addressed above—with regard to ICE Trust, certain clearing members and certain eligible contract participants—are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

[51] *See* notes 41 and 45, *supra*. As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange

for similar reasons, we are not exempting registered broker-dealers from: Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[52]

Further we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[53] regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[54] regarding the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[55] regarding broker-dealer obligations to make, keep and furnish information; (4) Section 17(b),[56] regarding broker-dealer records subject to examination; (5) Regulation T,[57] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3–1, regarding broker-dealer net capital; (7) Exchange Act Rule 15c3–3, regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a–3 through 17a–5, regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a–13, regarding quarterly security counts to be made by certain exchange members and broker-dealers.[58] Registered broker-dealers must comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices and safeguard against fraud and abuse.[59]

G. Solicitation of Comments

When we granted the December 2009 ICE Trust Order extending the exemptions granted in connection with CDS clearing by ICE Trust and expanding that relief to accommodate central clearing of customer CDS transactions, we requested comment on all aspects of the exemptions and particularly requested comments as to the relief we granted in connection with customer clearing. We received two comments in response to this request.[60]

In connection with this Order extending the exemptions granted in connection with CDS clearing by ICE Trust, we reiterate our request for comments on all aspects of the exemptions. We particularly request comments as to whether the conditions we have placed on the relief adequately protect customer collateral from the threat posed by clearing member insolvency, whether additional conditions or requirements are appropriate to promote compliance with the requirements of the exemptions, and what, if any, additional conditions would be appropriate.

We also request comment as to whether the segregation conditions of this Order should extend to certain transfers of variation margin associated with Cleared CDS, as well as whether CDS customers are able to easily access mark-to-market profits associated with Cleared CDS. Do any practices (such as, for example, negotiated "thresholds" in credit support annexes between clearing members and customers) impede customers from demanding and receiving the timely return of such mark-to-market profits? Should the Commission condition any future exemptions on segregating the mark-to-market profits associated with Cleared CDS if they are not returned to customers within a certain amount of time following demand (subject to provisions regarding reasonable minimum transfer amounts, and provisions permitting offset against amounts owing from the customer directly to the clearing member)? Would such a condition impose significant operational or other costs that may deter the clearing of customer CDS transactions? Are there other factors (*e.g.,* costs, benefits, market conditions, economic considerations, or availability of credit hedges) that may reduce the significance of any customer protection benefits provided by requiring segregation of such mark-to-market profits? We also invite comment on whether differences among CDS CCPs regarding protection of mark-to-market profits may have competitive impacts.

In addition, we request comment on how clearing members intend to comply with this Order's (and have complied with the December 2009 ICE Trust Order's) condition requiring the segregation of all margin posted by customers connected with purchasing, selling, clearing, settling or holding Cleared CDS positions—not only the gross margin required by ICE Trust rules. To what extent would clearing firms typically require certain customers to post such "excess" margin above the ICE Trust requirements in connection with Cleared CDS transactions?

Finally, to what extent do clearing members and customers seek to include Cleared CDS positions within portfolio margining calculations that include other instruments (*e.g.,* non-cleared CDS, other OTC derivatives or securities)? If portfolio margining is used, how do clearing members allocate the total collateral required by a clearing member from a customer between the portion posted in connection with Cleared CDS (and hence subject to this Order's segregation conditions) and the portion attributable to other derivatives transactions involving that clearing member and customer? To the extent a clearing member's portfolio margin calculations include a customer's Cleared CDS positions, is it reasonable to conclude that any portion of the customer margin is not connected with Cleared CDS, and thus does not need to be segregated? Would a dealer's inclusion of Cleared CDS positions in its portfolio margin calculation interfere with the customer protection benefits of CDS clearing in the event of a dealer's insolvency? In other words, would the dealer's cleared CDS customer positions be portable to another dealer if collateralized solely by the ICE Trust-required margin, or would the dealer's cleared CDS customers be placed at a disadvantage in an insolvency situation because of this practice? Should the Commission provide firms with further guidance regarding the inclusion of Cleared CDS in portfolio margin calculations?

Comments may be submitted by any of the following methods:

Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (e.g., requirements under Rule 17h–1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

[52] We also are not exempting those members from provisions related to government securities, as discussed above.

[53] 15 U.S.C. 78g(c).

[54] 15 U.S.C. 78o(c)(3).

[55] 15 U.S.C. 78q(a).

[56] 15 U.S.C. 78q(b).

[57] 12 CFR 220.1 *et seq.*

[58] Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

[59] Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules relating to custody, the use of customer securities, the use of customers' deposits or credit balances, and the establishment of minimum financial requirements.

[60] *See* Comment from Kristie L. Lovelady (Dec. 9, 2009) (requesting stronger restrictions generally); Comment from JP Morgan (Mar. 2, 2010) (opposing application of segregation conditions to variation margin transfers, and raising issues as to application of segregation conditions in the context of portfolio margining practices; both issues are the subject of additional requests for comment in this Order).

We also solicited comments earlier as part of the March 2009 ICE Trust Order, but received no comments in response to that request.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–05–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–05–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

III. Conclusion

It is hereby ordered, pursuant to Section 36(a) of the Exchange Act, that, until November 30, 2010:

(a) Exemption from Section 17A of the Exchange Act.

ICE Trust U.S. LLC ("ICE Trust") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f)(1) of this Order), subject to the following conditions:

(1) ICE Trust shall make available on its Web site its annual audited financial statements.

(2) ICE Trust shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it relating to its Cleared CDS clearance and settlement services. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) ICE Trust shall supply information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission, and shall provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to ICE Trust's Cleared CDS clearance and settlement services.

(4) ICE Trust shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. ICE Trust shall notify the Commission promptly when ICE Trust involuntarily terminates the membership of an entity that is utilizing ICE Trust's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to ICE Trust's disciplinary action.

(5) ICE Trust shall notify the Commission of all changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services, including its fee schedule and changes to risk management practices, the day before effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. All such rule changes will be posted on ICE Trust's Web site. Such notifications will not be deemed rule filings that require Commission approval.

(6) ICE Trust shall provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. ICE Trust shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel.

(7) ICE Trust shall report all significant systems outages to the Commission. If it appears that the outage may extend for 30 minutes or longer, ICE Trust shall report the systems outage immediately. If it appears that the outage will be resolved in less than 30 minutes, ICE Trust shall report the systems outage within a reasonable time after the outage has been resolved.

(8) ICE Trust, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Trust.

(b) Exemption from Sections 5 and 6 of the Exchange Act.

(1) ICE Trust shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, subject to the following conditions:

(i) ICE Trust shall report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

(A) The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and

(B) The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index;

(ii) ICE Trust shall establish and maintain adequate safeguards and procedures to protect clearing members' confidential trading information. Such safeguards and procedures shall include:

(A) Limiting access to the confidential trading information of clearing members to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and

(B) Establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed; and

(iii) ICE Trust shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1)–(8) of this Order.

(2) Any ICE Trust clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such ICE Trust clearing member uses any facility of ICE Trust to effect any transaction in Cleared CDS, or to report any such transaction, in connection with ICE Trust's clearance and risk management process for Cleared CDS.

(c) Exemption for ICE Trust, ICE Trust clearing members, and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) ICE Trust; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), including any ICE Trust clearing member, other than:

(A) An eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(B) A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the conditions specified in paragraph (c)(3) of this subsection, such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (*i.e.,* paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) The broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (including paragraphs (4) and (6) of Section 15(b)) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission;

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Conditions for ICE Trust clearing members.

(i) Any ICE Trust clearing member relying on this exemption must be in material compliance with the rules of ICE Trust.

(ii) Any ICE Trust clearing member relying on this exemption that participates in the clearing of Cleared CDS transactions on behalf of other persons must annually provide a certification to ICE Trust that attests to whether the clearing member is relying on the exemption from broker-dealer related requirements set forth in paragraph (d) of this Order.

(d) Exemption from broker-dealer related requirements for ICE Trust clearing members and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (d)(2) is available to:

(i) Any ICE Trust clearing member (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)); and

(ii) Any eligible contract participant that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)).

(2) Scope of exemption. The persons described in paragraph (d)(1) shall, solely with respect to Cleared CDS, be exempt from the broker-dealer registration requirements of Section 15(a)(1) and the other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission, subject to the conditions set forth in paragraph (d)(3) with respect to ICE Trust clearing members.

(3) Conditions for ICE Trust clearing members.

(i) General condition for ICE Trust clearing members. An ICE Trust clearing member relying on this exemption must be in material compliance with the rules of ICE Trust, and also must be in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

(ii) Additional conditions for ICE Trust clearing members that receive or hold customer funds or securities. Any ICE Trust clearing member that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for U.S. persons (or for any person if the clearing member is a U.S. clearing member)—other than for an affiliate that controls, is controlled by, or is under common control with the clearing member—also shall comply with the following conditions with respect to such activities:

(A) The U.S. person (or any person if the clearing member is a U.S. clearing member) for whom the clearing member receives or holds such funds or securities shall not be natural persons;

(B) The clearing member shall disclose to such U.S. person (or to any such person if the clearing member is a U.S. clearing member) that the clearing member is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member, that the insolvency law of the applicable jurisdiction may affect such persons' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding, and, if applicable, that non-U.S. clearing members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons;

(C) As promptly as practicable after receipt, the clearing member shall transfer such funds and securities (other than those promptly returned to such other person) to:

(I) The clearing member's Custodial Client Omnibus Margin Account at ICE Trust; or

(II) An account held by a third-party custodian, subject to the following requirements:

(*a*) The funds and securities must be held either:

(*1*) In the name of a customer, subject to an agreement to which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or

(*2*) In an omnibus account for which the clearing member maintains a daily record as to the amount held in the account that is owed to each customer, and which is subject to an agreement between the clearing member and the custodian specifying that:

(*i*) All assets in that account are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other accounts maintained by the clearing member with the custodian;

(*ii*) The assets held in that account shall at no time be used directly or indirectly as security for a loan to the clearing member by the custodian and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and

(*iii*) The assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian;

(*b*) The custodian may not be an affiliated person of the clearing member (as defined at paragraph (f)(2)); and

(*1*) If the custodian is a U.S. entity, it must be a bank (as that term is defined in section 3(a)(6) of the Exchange Act), have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency (as defined in section 3(a)(34) of the Exchange Act), of at least $1 billion, and have been approved to engage in a trust business by its appropriate regulatory agency;

(*2*) If the custodian is not a U.S. entity, it must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority (as defined in section 3(a)(52) of the Exchange Act) responsible for setting capital requirements for the entity, equating to at least $1 billion, and provide the clearing member, the customer and ICE Trust with a legal opinion providing that the assets held in the account are subject to regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial assets in the event of the insolvency of the custodian, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency;

(*c*) Such funds may be invested in Eligible Custodial Assets as that term is defined in ICE Trust's Custodial Asset Policies; and

(*d*) The clearing member must provide notice to ICE Trust that it is using the third-party custodian to hold customer collateral.

(D) To the extent there is any delay in transferring such funds and securities to the third-parties identified in paragraph (C), the clearing member shall effectively segregate the collateral in a way that, pursuant to applicable law, is reasonably expected to effectively protect such funds and securities from the clearing member's creditors. The clearing member shall not permit such persons to "opt out" of such segregation even if regulations or laws otherwise would permit such "opt out."

(E) The clearing member annually must provide ICE Trust with

(I) An assessment by the clearing member that it is in compliance with all the provisions of paragraphs (d)(3)(ii)(A) through (D) in connection with such activities, and

(II) A report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in paragraph (d)(3)(ii)(E)(I) and that is

(*a*) Dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(*b*) Produced in accordance with the auditing standards followed by the independent third party auditor in its audit of the clearing member's financial statements.

(F) The clearing member shall provide the Commission (upon request or pursuant to agreements reached between the Commission or the U.S. Government and any foreign securities authority (as defined in Section 3(a)(50) of the Exchange Act)) with any information or documents within the possession, custody, or control of the clearing member, any testimony of personnel of the clearing member, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to Cleared CDS transactions, except that if, after the clearing member has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the clearing member to provide the information, documents, testimony, or assistance to the Commission, the clearing member is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this exemption shall not longer be available to the clearing member.

(e) Exemption for certain registered broker-dealers.

A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(1) Section 7(c);
(2) Section 15(c)(3);
(3) Section 17(a);
(4) Section 17(b);
(5) Regulation T, 12 CFR 200.1 *et seq.;*
(6) Rule 15c3–1;
(7) Rule 15c3–3;
(8) Rule 17a–3;
(9) Rule 17a–4;
(10) Rule 17a–5; and
(11) Rule 17a–13.

(f) Definitions.

(1) For purposes of this Order, the term "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(i) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) A foreign sovereign debt security;

(D) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(ii) The reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1).

(2) For purposes of this Order, the term "Affiliated Person of the Clearing Member" shall mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with the clearing member. Ownership of 10 percent or more of the common stock of the relevant entity will be deemed *prima facie* control of that entity.

IV. Paperwork Reduction Act

Certain provisions of this Order contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[61] The Commission has submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information

The Commission found it to be necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional temporary exemptions discussed in this Order until November 30, 2010. Among other things, the Order would require an ICE Trust clearing member that receives or holds customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions to: (i) Provide ICE Trust with certain certifications/notifications, (ii) make certain disclosures to cleared CDS customers, (iii) enter into certain agreements to protect customer assets, (iv) maintain a record of each customer's share of assets maintained in an omnibus account, and (v) obtain a separate report, as part of its annual audit report, as to its compliance with the conditions of the ICE Trust Order regarding protection of customer assets.

B. Proposed Use of Information

These collection of information requirements are designed, among other things, to inform cleared CDS customers that their ability to recover assets placed with the clearing member are dependent on the applicable insolvency regime, provide Commission staff with access to information regarding whether clearing members are complying with the conditions of the ICE Trust order, and provide documentation helpful for the protection of cleared CDS customers' funds and securities.

C. Respondents

Based on conversations with industry participants, the Commission understands that approximately 12 firms may be presently engaged as CDS dealers and thus may seek to be a clearing member of ICE Trust. In addition, 8 more firms may enter into this business. Consequently, the Commission estimates that ICE Trust, like the other CCPs that clear CDS transactions, may have up to 20 clearing members.

D. Total Annual Reporting and Recordkeeping Burden

Paragraph III.(c)(3)(ii) of this Order requires any ICE Trust clearing member relying on the exemptive relief specified in paragraph (c) that participates in the clearing of cleared CDS transactions on behalf of other persons to annually provide a certification to ICE Trust that attests to whether the clearing member is relying on the exemption from broker-dealer related requirements set forth in paragraph (d) of that Order. The Commission estimates that it would take a clearing member approximately one half hour each year to complete the certification and provide it to ICE Trust, resulting in an aggregate burden of 10 hours per year for all 20 clearing members to comply with this requirement on an annual basis.[62]

Paragraph III.(d)(3)(ii)(C)(II)(*d*) of this Order requires that a clearing member notify ICE Trust if it is using a third-party custodian to hold customer collateral. The Commission estimates that it would take a clearing member approximately one half hour each year to draft a notification and provide it to ICE Trust, which would result in an aggregate burden of 10 hours per year for all 20 clearing members to comply with this requirement on an annual basis.[63]

Paragraph III.(d)(3)(ii)(B) of this Order requires an ICE Trust clearing member to disclose to its U.S. customers[64] that it is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities it holds, that the insolvency law of the applicable jurisdiction may affect the customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding, and, if it is not a U.S. entity, that it may be subject to an insolvency regime that is materially different from that applicable to U.S. persons. The Commission believes that clearing members could use the language in the ICE Trust order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers and a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.[65]

Paragraph III.(d)(3)(ii)(C)(II)(*a*)(*1*) of this Order requires that, if an ICE Trust clearing member chooses to segregate each of its customers' funds and securities in a separate account, it must obtain a tri-party agreement for each such account acknowledging that the assets held in the account are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in the account may not otherwise be pledged or re-hypothecated by the clearing member or the custodian. Paragraph III.(d)(ii)(C)(II)(*a*)(*2*) of the ICE Trust order requires that, if an ICE Trust clearing member chooses to segregate its customers' funds and securities on an omnibus basis, it must obtain an agreement with the custodian with respect to the omnibus account acknowledging that the assets held in the account (i) are customer assets and are being kept separate from any other accounts maintained by the clearing member with the custodian, (ii) may at no time be used directly or indirectly as security for a loan to the clearing member by the custodian and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian, and (iii) may not otherwise be pledged or re-hypothecated by the clearing member or the custodian. Opening a bank account generally includes discussions regarding the purpose for the account and a determination as to the terms and conditions applicable to such an account. We understand that most banks presently maintain omnibus and other similar types of accounts that are designed to recognize legally that the

[61] 44 U.S.C. 3501 *et seq.*

[62] 10 hours = (20 clearing members × ½ hour per clearing member). This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (*see e.g.,* Exchange Act Release No. 41661 (Jul 27, 1999) (64 FR 42012 (Aug. 3, 1999)), and the burden associated with the Year 2000 Operational Capability Requirements, including notification and certifications required by Rule 15b7–3T(e).

[63] Id.

[64] If the clearing member is a U.S. entity, it must make this disclosure to all of its customers.

[65] 30 hours = (1 hour per clearing member to draft the disclosure + ½ hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) 20 clearing members.

assets in the account may not be attached to cover debts of the account holder. Thus the standard agreement for this type of account used by banks should contain the representations and disclosures required by the proposed amendment. However, a small percentage of clearing members may need to work with a bank to modify its standard agreement. We estimate that 5% of the 20 clearing members, or 1 firm, may use a bank with a standard agreement that does not contain the required language.[66] We further estimate each clearing member that uses a bank with a standard agreement that does not contain the required language would spend approximately 20 hours of employee resources working with the bank to update its standard agreement template. Therefore, we estimate that the total one-time burden to the industry as a result of this proposed requirement would be approximately 20 hours.[67]

Paragraph III.(d)(3)(ii)(C)(II)(*a*)(*2*) of this Order further requires that the clearing member maintain a daily record as to the amount held in the omnibus account that is owed to each customer. The Commission included this requirement in the ICE Trust order to stress the importance of such a record. However it believes that a prudent clearing member likely would create and maintain such a record for business purposes. Consequently, the Commission believes this requirement would not create any additional paperwork burden.

Paragraph III.(d)(3)(ii)(E) of this Order requires ICE Trust clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions annually to provide ICE Trust with an assessment that it is in compliance with all the provisions of paragraphs III.(d)(3)(ii)(A) through (D) of that order in connection with such activities, and a report by the clearing member's independent third-party auditor, as of the same date as the firm's annual audit report,[68] that attests to, and reports on, the clearing member's assessment. The Commission estimates that it will take each clearing member approximately five hours each year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements.[69] Further, the Commission estimates that it will cost each clearing member approximately $200,000 more each year to have its auditor prepare this special report as part of its audit of the clearing member.[70] Consequently, the Commission estimates that compliance with this requirement will result in an aggregate annual burden of 100 hours for all 20 clearing members, and that the total additional cost of this requirement will be approximately $4,000,000 each year.[71]

E. Collection of Information Is Mandatory

The collections of information contained in the conditions to this Order are mandatory for any entity wishing to rely on the exemptions granted by this Order.

F. Confidentiality

Certain of the conditions of this Order that address collections of information require ICE Trust clearing members to make disclosures to their customers, or to provide other information to ICE Trust (and in some cases also to customers). Apart from those requirements, the provisions of this Order that address collections of information do not address or restrict the confidentiality of the documentation prepared by ICE Trust clearing members under the exemptive conditions. Accordingly, ICE Trust clearing members would have to make the applicable information available to regulatory authorities or other persons to the extent otherwise provided by law.

G. Request for Comment on Paperwork Reduction Act

The Commission requests, pursuant to 44 U.S.C. 3506(c)(2)(B), comment on the collections of information contained in this Order to:

(i) Evaluate whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

(ii) Evaluate the accuracy of the Commission's estimates of the burden of the collections of information;

(iii) Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Evaluate whether there are ways to minimize the burden of the collections of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–05–09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–05–09, and be submitted to the Securities and Exchange Commission, Records Management Office, 100 F Street, NE., Washington, DC 20549.

[66] This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Exchange Act Release No. 55431 (Mar. 9, 2007) (72 FR 12862 (Mar. 19, 2007)), and the burden associated with the amendments to the financial responsibility rules, including language required in securities lending agreements).

[67] 20 hours = (20 clearing members × 5%) × 20 hours to work with a bank to update its standard agreement template to include the necessary language.

[68] The Commission intends for this requirement to be performed in conjunction with the firm's annual audit report.

[69] This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (*see e.g.,* Securities Act Release No. 8138 (Oct. 9, 2002) (67 FR 66208 (Oct. 30, 2002)), and the burden associated with the Disclosure Required by the Sarbanes-Oxley Act of 2002, including requirements relating to internal control reports).

[70] This estimate is based on staff conversations with an audit firm. That firm suggested that the cost of such an audit report could range from $10,000 to $1 million, depending on the size of the clearing member, the complexity of its systems, and whether the work included a review of other systems already being reviewed as part of audit work the firms is already providing to the clearing member. The staff understands that it would be less costly to perform this type of audit if the clearing member chooses to forward all customer collateral to ICE Trust (an option allowed by this Order) and does not use any third party. Finally, the staff understands that most ICE Trust clearing members are large dealers whose audits likely include internal control reviews and SAS 70 reports regarding custody of customer assets, which would require a review of the same or similar systems used to comply with the audit report requirement in this order.

[71] 100 hours = (5 hours for each clearing member to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements × 20 clearing members). $4 million = $200,000 per clearing member × 20 clearing members.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5222 Filed 3–10–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61647; File No. SR–MSRB–2010–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Consisting of Revised Interpretive Questions & Answers on the Application of Rule G–37

March 4, 2010.

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 February 25, 2010, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) 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 persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of revisions to certain of the existing Rule G–37 interpretive Questions & Answers ("Qs&As") to reflect the new rule language as contained in recently adopted amendments to Rule G–37 [5], concerning disclosure of certain contributions to bond ballot campaigns. The MSRB requested that the proposed rule change become effective immediately upon its filing with the SEC.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB'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 MSRB 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 MSRB 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

Since the adoption of Rule G–37, on political contributions and prohibitions on municipal securities business, the MSRB has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry in understanding and complying with the provisions of the rule, the MSRB has published a series of interpretive notices that set forth, in Q & A format, general guidance on Rule G–37.

On February 1, 2010, amendments to Rule G–37 became effective concerning disclosure of certain contributions to bond ballot campaigns. The proposed rule change revises certain of the Rule G–37 Qs&As to reflect the new rule language as contained in the amendments.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[6] which provides that the MSRB's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act in that it provides guidance to brokers, dealers, and municipal securities dealers in complying with existing MSRB rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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, since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [7] and Rule 19b–4(f)(1) thereunder,[8] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the MSRB. 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.[9]

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–MSRB–2010–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Securities Exchange Act Release No. 61381, File No. SR–MSRB–2009–18 (January 20, 2010).

[6] 15 U.S.C. 78o-4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2010–01. 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 Web site viewing and printing 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 MSRB. 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–MSRB–2010–01 and should be submitted on or before April 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5215 Filed 3–10–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61646; File No. SR–NYSE–2010–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending the Rule Governing the Issuance of Trading Licenses

March 4, 2010.

I. Introduction

On January 13, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] a proposal to amend its Rule 300 (Trading Licenses) and Rule 309 (Failure to Pay Exchange Fees). The proposed rule change was published for comment in the **Federal Register** on February 2, 2010.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Rule 300 provides that member organizations may buy trading licenses in the annual offering and may buy licenses at any other time in the year, provided that the maximum number of 1,366 licenses has not been issued and subject to limitations on the number of licenses a single member organization may hold. Member organizations must pay for their trading licenses in 12 monthly installments, with the first installment due prior to the commencement of the applicable year. The Exchange represents that it relies in part on the revenues from trading license fees to pay for the maintenance of the trading floor and to fund its trading floor regulatory activities. According to the Exchange, if some member organizations consistently fail to pay their trading license fee bills, the Exchange would be forced to impose higher fees on those member organizations which do pay their bills.

The Exchange therefore proposes to amend Rule 300 to provide that a member organization shall be ineligible to purchase a trading license, either in the annual offering or subsequently, if, at the time of such proposed purchase, such member organization remains three months in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license.[5] Any trading license purchased by a member organization in the annual auction for the calendar year commencing January 1, 2010, will be subject to automatic revocation at the close of business on March 31, 2010, if the member organization that holds such license remains three months in arrears in making such payments at that time.

The Exchange also proposes to adopt appeal procedures for the denial or revocation of a member organization's trading license. One calendar month prior to the effective date of any potential denial of renewal or revocation of a trading license (the "Expiration Date") pursuant to Rule 300(h), the Exchange would notify each applicable member organization that is currently two months or more in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license of the amount of then overdue trading license installment payments and the possibility of denial of renewal or revocation of the trading license on the Expiration Date. The notice must include a description of the appeal process. If the member organization believes the Exchange's records are incorrect, the member organization must submit a written appeal within five business days of receipt of the Exchange's notice to the officer of the Exchange identified for that purpose in such notice, providing an explanation as to why it believes the Exchange's records are incorrect, and providing copies of any relevant documentation. The Exchange would be required to provide a final determination in writing in response to any such appeal no later than 15 calendar days prior to the effective date of the potential denial of renewal or revocation of the applicable trading license.[6] If the Exchange denies the appeal, its written final determination must specifically address the arguments made by the member organization in its submission. The Exchange's written determination would be final and conclusive action by the Exchange.

A written record would be required to be kept of any proceedings under Rule 300(h). As the appeal procedures under proposed Rule 300(h) would not include any provision for an oral hearing, the Exchange expects that the written record would generally consist of (i) the written appeal and supporting documents (if any) submitted by the member organization and (ii) the Exchange's written determination. Finally, the Exchange states that any member organization which forfeits its trading licenses as of March 31, 2010 would only owe the pro rata license fee for 2010 through that date. Any member organization which forfeits its trading

[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. 61424 (January 26, 2010), 75 FR 5367.

[5] The Exchange also proposes to amend Rule 309 to explicitly provide that failure to pay trading license fee installments will be governed by proposed Rule 300(h).

[6] The Exchange represents that, if it denies a member organization's appeal under Rule 300(h), the Exchange will notify the Commission in the manner required by Exchange Act Rule 19d–1.

licenses in 2010 or is ineligible to purchase trading licenses thereafter may purchase trading licenses (to the extent there are available unsold licenses) at such time as it is no longer three months in arrears in its payments.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [7] and, in particular, the requirements of Sections 6(b)(4), 6(b)(5) and 6(b)(7) of the Act.[8] Section 6(b)(4) of the Act [9] requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act [10] requires, among other things, that the rules of a national securities exchange are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Section 6(b)(7) of the Act [11] requires, among other things, that the exchange's rules provide fair procedures for prohibiting or limiting any person with respect to access to services offered by the exchange or member thereof.

The Commission believes that the proposal is consistent with Section 6(b)(4) of the Act [12] in that it provides for an equitable allocation of fees among member organizations. The Exchange represents that it relies in part on the revenues from trading license fees to pay for the maintenance of the trading floor and to fund its trading floor regulatory activities. The trading license fees and rules limiting the number of trading licenses that may be initially applied for are the same for all member organizations, and member organizations would be denied trading floor privileges only if they have not paid the trading license fee for several months. The Commission notes that the proposal may encourage member organizations to pay their bills more promptly and thereby enable the Exchange to avoid imposing the cost of the nonpayment by a small number of member organizations on the majority of other member organizations that routinely pay on time.

The Commission also believes that the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Act. The Commission notes that the new procedures specify procedures to provide notice to member organizations of a pending denial or revocation. In addition, member organizations receive monthly trading license bills that reflect unpaid balances from previous periods. The Exchange has also represented that it would distribute an Information Memorandum to its member organizations to inform them of the proposed rule change.[13] Thereafter, the procedures provide that, one calendar month prior to the Expiration Date, the Exchange will notify each applicable member organization that is currently two months or more in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license of the amount of then overdue trading license installment payments and the possibility of denial of renewal or revocation of the trading license on the Expiration Date. The notice must include a description of the appeal process.

The Commission also notes that the proposal clarifies the scope of the Exchange's review on appeal and sets forth specific time frames for scheduling and conducting an appeal of a pending denial or revocation. If the member organization believes the Exchange's records are incorrect, the member organization must submit a written appeal within five business days of receipt of the Exchange's notice, providing an explanation as to why it believes the Exchange's records are incorrect, and providing copies of any relevant documentation. In addition, the Exchange must provide a final determination in writing in response to any such appeal no later than 15 calendar days prior to the effective date of the potential denial of renewal or revocation of the applicable trading license. If the Exchange denies the appeal, its written final determination must specifically address the arguments made by the member organization in its submission. The written determination shall be final and conclusive action by the Exchange. In addition, the Exchange has required a written record of any proceedings.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[14]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–2010–03) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5214 Filed 3–10–10; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4); 15 U.S.C. 78f(b)(5); 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(7).

[12] 15 U.S.C. 78f(b)(4).

[13] The first such notice will be sent to member organizations that are two months or more in arrears as of the end of February 2010. *See* e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext LLC, to David Liu, Assistant Director, and Leigh W. Duffy, Attorney-Adviser, Division of Trading and Markets, Commission, dated January 25, 2010.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61648; File No. SR–FINRA–2010–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Additional Relief Relating to Certain FINRA/Nasdaq Trade Reporting Facility and OTC Reporting Facility Fees

March 4, 2010.

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 March 1, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to waive and issue a credit for fees that were charged to FINRA members under FINRA Rules 7620A and 7710 for the submission of "as/of" trade reports to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") and the OTC Reporting Facility ("ORF"), respectively, for trades executed on eight days in the months of August and September 2009. The relief proposed herein is in addition to the fee relief provided under SR–FINRA–2009–088. The proposed rule change does not require amendments to any FINRA rules.

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

Pursuant to FINRA Rules 7620A and 7710, members are charged fees for trade reporting to the FINRA/Nasdaq TRF and ORF, respectively, and the fee for the submission of late trade reports, including "as/of" reports, is higher than the fee for the submission of timely trade reports. "As/of" reports are reports of trades that were executed on a date prior to the date they were reported.

During the months of August and September 2009, various Automated Confirmation Transaction Service ("ACT") technology issues impacted trade reporting to the FINRA/Nasdaq TRF and the ORF for a period of eight days: August 3, August 4, August 5, August 17, August 21, September 16, September 25 and September 28. Due to the ACT technology issues, members were unable to report trades on trade date and thus incurred higher than normal reporting charges due to the higher number of "as/of" reports that they were compelled to submit.

On December 7, 2009, FINRA filed proposed rule change SR–FINRA–2009–088, and on December 17, 2009, the SEC published notice of filing and immediate effectiveness of SR–FINRA–2009–088 in the **Federal Register**.[5] In that filing, FINRA proposed to waive the fees for "as/of" trade reports submitted on the following days in 2009: August 4, August 5, August 6, August 18, August 24, September 17, September 28 and September 29. These dates are the next business day (T+1) following the days on which the ACT technology issues occurred. The relief proposed in SR–FINRA–2009–088 was based on the assumption that members that were unable to report on trade date due to ACT technology issues reported the trades on the following business day (T+1).

Subsequent to publication of notice in the **Federal Register**, however, FINRA obtained additional information from Nasdaq, the FINRA/Nasdaq TRF "Business Member" and ACT technology provider, and it was determined that the scope of the relief provided under SR–FINRA–2009–088 is too narrow. Some members that were unable to report on trade date did not, in fact, report on the following business day (T+1), but reported two (or perhaps more) days after trade date (T+2 or later). The relief provided under SR–FINRA–2009–088 does not reach these members.

Accordingly, FINRA is proposing to waive the fees for all "as/of" trade reports submitted on T+2 or later to the FINRA/Nasdaq TRF and ORF that have a trade execution date of August 3, August 4, August 5, August 17, August 21, September 16, September 25 and September 28, 2009 (i.e., the dates on which the ACT technology issues occurred). The proposed relief will apply to fees for "as/of" trade reports submitted through December 31, 2009. Members will be issued a credit for the fees on a future invoice.[6]

The proposed relief is in addition to the relief provided in SR–FINRA–2009–088 for fees charged on "as/of" trade reports submitted on T+1. FINRA believes that such additional relief is appropriate in order to make all members whole, since the higher charges were the result of an ACT technology issue and not the fault of the member.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[7] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed waiver and credit of the "as/of" reporting fees is fair and equitable in that it will apply uniformly to all FINRA members that submitted "as/of" trade reports to the FINRA/Nasdaq TRF and ORF for trades with the designated trade dates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and paragraph (f)(2) of Rule 19b–4 thereunder.[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 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:

[5] *See* Securities Exchange Act Release No. 61160 (December 14, 2009), 74 FR 67284 (December 18, 2009) (Notice of Filing and Immediate Effectiveness of SR–FINRA–2009–088).

[6] FINRA notes that a similar proposal to waive and issue a credit for certain cancel fees was the subject of a filing by NASDAQ OMX PHLX, Inc. *See* Securities Exchange Act Release No. 60853 (October 21, 2009), 74 FR 55594 (October 28, 2009) (Notice of Filing and Immediate Effectiveness of File No. SR–PHLX–2009–89).

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2010–009 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–2010–009. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2010–009 and should be submitted on or before April 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5217 Filed 3–10–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61643; File No. SR–NYSEAmex–2010–16]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Rules 993NY and 945

March 3, 2010.

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 February 24, 2010, 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 delete Rules 993NY and 945, which governed processing of orders received through the OCC Hub. The text of the proposed rule change is available on NYSE Amex's Web site at *http://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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to delete outdated rules related to the receipt, execution, and reporting of Principal ("P") and Principal Acting as Agent ("P/A") entered to the Exchange through the order routing hub developed by the Options Clearing Corporation ("OCC Hub"). The affected Rules are NYSE Amex Rule 993NY—Temporary Rule Governing P and P/A orders, and Rule 945 Liability for the Options Intermarket Linkage.

At the time of approval of the Options Order Protection and Locked/Crossed Market Plan ("New Plan") and the simultaneous withdrawal of the Exchange from the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Old Plan"), the Exchange also filed and received approval for rules implementing the New Plan.[3] Certain Participants to the New Plan did not have technology in place to take full advantage of the New Plan, and remained dependent on the OCC Hub to route orders to markets at the NBBO. The Exchange was aware that such dependence might occur, and included a Temporary Rule Governing P and P/A Orders as part of the implementing rules for the New Plan.

Additionally, because the OCC Hub remained connected to the Exchange, Rule 945, Liability for the Options Intermarket Linkage, was not eliminated with the other rules related to the Old Plan.

All of the Participant Exchanges have now migrated off the OCC Hub; consequently the rules related to the OCC Hub and the Old Plan are no longer necessary.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, as the rules are now obsolete and should be removed from the rule set.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 60526 (August 18, 2009) (NYSEAmex–2009–19) 74 FR 43185 (August 26, 2009).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–16 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–2010–16. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–16 and should be submitted on or before April 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5221 Filed 3–10–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61640; File No. SR–ISE–2010–13]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Minimum Quantity Order Type

March 3, 2010.

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 February 23, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 Exchange. The ISE filed this proposal pursuant to Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a minimum quantity order type. The text of the proposed rule change is as follows (deletions are in [brackets]; additions are *underlined*):

Rule 715. Types of Orders

(a) through (k) no change.

(l) Minimum Quantity Orders. A minimum quantity order is an order that is available for partial execution, but each partial execution must be for a specified number of contracts or greater. If the balance of the order after one or more partial executions is less than the minimum, such balance is treated as all-or-none.

Rule 713. Priority of Quotes and Orders

(a) through (f) no change.

Supplementary Material to Rule 713

.01 No change.

.02 All-or none orders, as defined in Rule 715(c), *and minimum quantity orders, as defined in Rule 715(l),* are contingency orders that have no priority on the book. Such orders are maintained in the system and remain available for execution after all other trading interest at the same price has been exhausted.

.03 through .04 no change.

Rule 717. Limitations on Orders

* * * * *

Supplementary Material to Rule 717

.01–.03 No Change.

.04 [A] [n]*N*on-marketable all-or-none limit orders *and non-marketable minimum quantity orders* shall be deemed "exposed" for the purposes of paragraphs (d) and (e) one second following a broadcast notifying market participants that such an order to buy or sell a specified number of contracts at a specified price *either all-or-none or with a specified minimum quantity* has been received in the options series. *For non-marketable minimum quantity orders, the broadcast will specify the minimum quantity that can be executed.*

.05 No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

The Exchange seeks to allow members to enter minimum quantity orders on the Exchange. A minimum quantity order is an order that is available for partial execution, but each partial execution must be for a specified number of contracts or greater. If the balance of the order after one or more partial executions is less than the minimum, such balance is treated as all-or-none. This order type currently is available on other options exchanges.[4]

Like all-or-none orders, minimum quantity orders are contingency orders that are not displayed in the Exchange's best bid or offer. However, the Exchange will disseminate to market participants an indication that a minimum quantity order has been entered. As is the case with all-or-none orders, pursuant to Rule 717(d) and (e), the entering member will be required to wait at least one second before entering a contra-side proprietary or solicited order that would execute against the minimum quantity order. While the Exchange believes it is unlikely that this order type would be used for crossing purposes, disseminating the arrival of the order in the same manner as all-or-none orders will minimize inadvertent violations of Rule 717(d) or (e) and increase the opportunity for market participants to provide liquidity to the orders.

2. Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposal will provide members with an additional order type that they may chose to utilize on the Exchange. Additionally, under the proposed rule change minimum quantity orders will be exposed to members so that there is a greater opportunity for market participants to interact with such orders.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

The Exchange believes the proposed rule change is non-controversial in that it is similar to the rules of the CBOE and BATS. Further, the Exchange believes the proposed rule change may assist investors by exposing the minimum quantity orders, thus allowing a greater opportunity for market participants to interact with such orders. The Exchange also believes that the proposed rule change does not raise any new, unique or substantive issues, and is beneficial for competitive purposes and to promote a free and open market for the benefit of investors.

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–ISE–2010–13 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–2010–13. 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 Web site viewing and printing 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

[4] *See, e.g.,* Chicago Board Options Exchange ("CBOE") Rule 43.2(a)(9)(E) (Types of Orders Handled) and Bats Exchange, Inc. ("BATS") Rule 21.1(d)(3) (Minimum Quantity Orders).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, or such shorted time as designated by the Commission. The Exchange provided a copy of this rule filing to the Commission at least five business days prior to the date of this filing.

submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2010–13 and should be submitted on or before April 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5220 Filed 3–10–10; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0076]

Notice Announcing Addresses for Service of Process

AGENCY: Social Security Administration.

ACTION: Notice announcing addresses for summonses and complaints.

SUMMARY: The Office of the General Counsel (OGC) is responsible for processing and handling summonses and complaints in lawsuits involving judicial review of our final decisions on individual claims for benefits under titles II, VIII, and XVI of the Social Security Act (Act). Summonses and complaints in these cases should be mailed directly to the OGC location responsible for the jurisdiction in which the complaint has been filed. The names and current addresses of those offices and their jurisdictions are set out in this notice.

FOR FURTHER INFORMATION CONTACT: Jeannette M. Mandycz, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6404, (410) 965–6471.

SUPPLEMENTARY INFORMATION: Summonses and complaints in cases seeking judicial review of our final decisions on individual claims for benefits under titles II, VIII, and XVI of the Act should be mailed directly to the OGC location responsible for the jurisdiction in which the complaint has been filed. This notice replaces 70 FR 73320–01 published on December 9, 2005, and reflects changes in the OGC offices that serve the Middle District of Alabama, Arizona, the Southern District of Florida, the Northern District of Mississippi, and the Eastern District of Virginia. In addition, we are updating the addresses for the Offices of the Regional Chief Counsels in Philadelphia (Region III), Dallas (Region VI), and Kansas City (Region VII). The jurisdictional responsibilities, names, and addresses of these offices are as follows:

Alabama

U.S. District Court—Middle District of Alabama: Office of the Regional Chief Counsel, Denver (Region VIII).

U.S. District Court—Northern District of Alabama: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Alabama: Office of the Regional Chief Counsel, Denver (Region VIII).

Alaska

U.S. District Court—Alaska: Office of the Regional Chief Counsel, Seattle (Region X).

Arizona

U.S. District Court—Arizona: Office of the Regional Chief Counsel, Denver (Region VIII).

Arkansas

U.S. District Court—Eastern District of Arkansas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Arkansas: Office of the Regional Chief Counsel, Dallas (Region VI).

California

U.S. District Court—Central District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Eastern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Northern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

U.S. District Court—Southern District of California: Office of the Regional Chief Counsel, San Francisco (Region IX).

Colorado

U.S. District Court—Colorado: Office of the Regional Chief Counsel, Denver (Region VIII).

Connecticut

U.S. District Court—Connecticut: Office of the Regional Chief Counsel, Boston (Region I).

Delaware

U.S. District Court—Delaware: Office of the Regional Chief Counsel, Philadelphia (Region III).

District of Columbia

U.S. District Court—District of Columbia: Office of Program Law, Baltimore.

Florida

U.S. District Court—Middle District of Florida: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Florida: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Southern District of Florida: Office of the Regional Chief Counsel, Philadelphia (Region III).

Georgia

U.S. District Court—Middle District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Northern District of Georgia: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Southern District of Georgia: Office of the Regional Chief Counsel, Boston (Region I).

Guam

U.S. District Court—Guam: Office of the Regional Chief Counsel, San Francisco (Region IX).

Hawaii

U.S. District Court—Hawaii: Office of the Regional Chief Counsel, San Francisco (Region IX).

Idaho

U.S. District Court—Idaho: Office of the Regional Chief Counsel, Seattle (Region X).

Illinois

U.S. District Court—Central District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Northern District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Southern District of Illinois: Office of the Regional Chief Counsel, Chicago (Region V).

Indiana

U.S. District Court—Northern District of Indiana: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Southern District of Indiana: Office of the Regional Chief Counsel, Chicago (Region V).

Iowa

U.S. District Court—Northern District of Iowa: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Southern District of Iowa: Office of the Regional Chief Counsel, Kansas City (Region VII).

Kansas

U.S. District Court—Kansas: Office of the Regional Chief Counsel, Kansas City (Region VII).

[7] 17 CFR 200.30–3(a)(12).

Kentucky

U.S. District Court—Eastern District of Kentucky: Office of the Regional Chief Counsel, Atlanta (Region IV).

U.S. District Court—Western District of Kentucky: Office of the Regional Chief Counsel, Atlanta (Region IV).

Louisiana

U.S. District Court—Eastern District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Middle District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Louisiana: Office of the Regional Chief Counsel, Dallas (Region VI).

Maine

U.S. District Court—Maine: Office of the Regional Chief Counsel, Boston (Region I).

Maryland

U.S. District Court—Maryland: Office of Program Law, Baltimore.

Massachusetts

U.S. District Court—Massachusetts: Office of the Regional Chief Counsel, Boston (Region I).

Michigan

U.S. District Court—Eastern District of Michigan: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Western District of Michigan: Office of the Regional Chief Counsel, Chicago (Region V).

Minnesota

U.S. District Court—Minnesota: Office of the Regional Chief Counsel, Chicago (Region V).

Mississippi

U.S. District Court—Northern District of Mississippi: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Mississippi: Office of the Regional Chief Counsel, Boston (Region I).

Missouri

U.S. District Court—Eastern District of Missouri: Office of the Regional Chief Counsel, Kansas City (Region VII).

U.S. District Court—Western District of Missouri: Office of the Regional Chief Counsel, Kansas City (Region VII).

Montana

U.S. District Court—Montana: Office of the Regional Chief Counsel, Denver (Region VIII).

Nebraska

U.S. District Court—Nebraska: Office of the Regional Chief Counsel, Kansas City (Region VII).

Nevada

U.S. District Court—Nevada: Office of the Regional Chief Counsel, San Francisco (Region IX).

New Hampshire

U.S. District Court—New Hampshire: Office of the Regional Chief Counsel, Boston (Region I).

New Jersey

U.S. District Court—New Jersey: Office of the Regional Chief Counsel, New York (Region II).

New Mexico

U.S. District Court—New Mexico: Office of the Regional Chief Counsel, Dallas (Region VI).

New York

U.S. District Court—Eastern District of New York: Office of the Regional Chief Counsel, New York (Region II).

U.S. District Court—Northern District of New York: Office of the Regional Chief Counsel, New York (Region II).

U.S. District Court—Southern District of New York: Office of the Regional Chief Counsel, New York (Region II).

U.S. District Court—Western District of New York: Office of the Regional Chief Counsel, New York (Region II).

North Carolina

U.S. District Court—Eastern District of North Carolina: Office of Program Law, Baltimore.

U.S. District Court—Middle District of North Carolina: Office of the Regional Chief Counsel, Boston (Region I).

U.S. District Court—Western District of North Carolina: Office of the Regional Chief Counsel, Boston (Region I).

North Dakota

U.S. District Court—North Dakota: Office of the Regional Chief Counsel, Denver (Region VIII).

Northern Mariana Islands

U.S. District Court—Northern Mariana Islands: Office of the Regional Chief Counsel, San Francisco (Region IX).

Ohio

U.S. District Court—Northern District of Ohio: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Southern District of Ohio: Office of the Regional Chief Counsel, Chicago (Region V).

Oklahoma

U.S. District Court—Eastern District of Oklahoma: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Northern District of Oklahoma: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Oklahoma: Office of the Regional Chief Counsel, Dallas (Region VI).

Oregon

U.S. District Court—Oregon: Office of the Regional Chief Counsel, Seattle (Region X).

Pennsylvania

U.S. District Court—Eastern District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Middle District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of Pennsylvania: Office of the Regional Chief Counsel, Philadelphia (Region III).

Puerto Rico

U.S. District Court—Puerto Rico: Office of the Regional Chief Counsel, Boston (Region I).

Rhode Island

U.S. District Court—Rhode Island: Office of the Regional Chief Counsel, Boston (Region I).

South Carolina

U.S. District Court—South Carolina: Office of the Regional Chief Counsel, Denver (Region VIII).

South Dakota

U.S. District Court—South Dakota: Office of the Regional Chief Counsel, Denver (Region VIII).

Tennessee

U.S. District Court—Eastern District of Tennessee: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Middle District of Tennessee: Office of Program Law, Baltimore.

U.S. District Court—Western District of Tennessee: Office of the Regional Chief Counsel, Kansas City (Region VII).

Texas

U.S. District Court—Eastern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Northern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Southern District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

U.S. District Court—Western District of Texas: Office of the Regional Chief Counsel, Dallas (Region VI).

Utah

U.S. District Court—Utah: Office of the Regional Chief Counsel, Denver (Region VIII).

Vermont

U.S. District Court—Vermont: Office of the Regional Chief Counsel, Boston (Region I).

Virgin Islands

U.S. District Court—Virgin Islands: Office of the Regional Chief Counsel, New York (Region II).

Virginia

U.S. District Court—Eastern District of Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Western District of Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

Washington

U.S. District Court—Eastern District of Washington: Office of the Regional Chief Counsel, Seattle (Region X).

U.S. District Court—Western District of Washington: Office of the Regional Chief Counsel, Seattle (Region X).

West Virginia

U.S. District Court—Northern District of West Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

U.S. District Court—Southern District of West Virginia: Office of the Regional Chief Counsel, Philadelphia (Region III).

Wisconsin

U.S. District Court—Eastern District of Wisconsin: Office of the Regional Chief Counsel, Chicago (Region V).

U.S. District Court—Western District of Wisconsin: Office of the Regional Chief Counsel, Chicago (Region V).

Wyoming

U.S. District Court—Wyoming: Office of the Regional Chief Counsel, Denver (Region VIII).

Addresses of OGC Offices

Office of Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Altmeyer Building, Room 617, Baltimore, MD 21235–6401.

Office of the Regional Chief Counsel, Region I, Social Security Administration, JFK Federal Building, Room 625, Boston, MA 02203–0002.

Office of the Regional Chief Counsel, Region II, Social Security Administration, 26 Federal Plaza, Room 3904, New York, NY 10278–0004.

Office of the Regional Chief Counsel, Region III, Social Security Administration, 300 Spring Garden Street, 6th Floor, Philadelphia, PA 19123–2932.

Office of the Regional Chief Counsel, Region IV, Social Security Administration, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 20T45,Atlanta, GA 30303–8920.

Office of the Regional Chief Counsel, Region V, Social Security Administration, 200 West Adams Street, 30th Floor, Chicago, IL 60606–5208.

Office of the Regional Chief Counsel, Region VI, Social Security Administration, 1301 Young Street, Ste. A702, Dallas, TX 75202–5433.

Office of the Regional Chief Counsel, Region VII, Social Security Administration, 601 E. 12th Street, Room 965, Kansas City, MO 64106–2898.

Office of the Regional Chief Counsel, Region VIII, Social Security Administration, 1961 Stout Street, Suite 1001A, Denver, CO 80294–3538.

Office of the Regional Chief Counsel, Region IX, Social Security Administration, 333 Market Street, Ste. 1500, San Francisco, CA 94105–2102.

Office of the Regional Chief Counsel, Region X, Social Security Administration, 701 Fifth Avenue, Suite 2900 MS/901, Seattle, WA 98104–7075.

Dated: March 4, 2010.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2010–5199 Filed 3–10–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6916]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The U.S./Pakistan Professional Partnership Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/EUR–SCA–10–32.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: April 9, 2010.

Executive Summary: In his December 1, 2009, speech in West Point, New York, President Obama said that a new diplomatic initiative in Pakistan would be part of the U.S. strategy to bring peace and stability in the Afghanistan/Pakistan region. As part of this initiative, ECA is seeking proposals for a new two-part program, called "The U.S./Pakistan Professional Partnership Program." This program will bring young professionals (ages 20–35) from the two countries together to develop cross cultural relationships and develop professional skills that will positively impact people's lives and will result in stronger ties between the two nations.

ECA is seeking proposals from qualified applicants for two separate programs. The Bureau expects funding in the amount of approximately $3,700,000 to be available for these programs and expects to award a total of two grants in this competition, one for each topic.

The first project—"Professional Partnerships: Journalism"—will involve Pakistani and American journalists in a program designed to demonstrate journalism skills, offer professional development opportunities, and offer internships at U.S-based media outlets for Pakistani journalists.

The second project—"Professional Partnerships: Public Administration"—will examine the skills employed by American and Pakistani public administration professionals at the national, regional, and local levels. This program will include internships for Pakistani professionals with U.S.-based professionals.

I. Funding Opportunity Description

Authority:

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Funding for this competition is provided through special FY 2009/FY 2010 supplemental funds that have been appropriated to the Department of State.

General Program Outlines

The Following applies to both the Journalism and Public Administration Programs:

Language: This program is for English and non-English speaking Pakistani participants. English language ability will not be a requirement to participate. The various groups should be grouped by language (English, Urdu, and Pashto.) For Urdu and Pashto, State Department

Language Services interpreters will be assigned through the Office of Citizen Exchanges. There will be approximately three interpreters assigned for the group orientation portion of the program and about one interpreter to three Pakistani participants for the internship portion of the program. Proposals should budget for the appropriate amount of interpreters. See IV.3e.2c. for specifics on budgeting for interpreters.

Visas: Applicants must demonstrate that they can work with ECA and PAS Islamabad for the U.S. visas and directly with the Pakistani Embassy for its visas. ECA will issue the DS–2019 forms required for J visas; see Section IV.3d.1 for additional information related to the administration of J visa programs.

Travel: The grantee will arrange all round-trip international travel, complying with the Fly America Act, and domestic travel arrangements for the participants. All Pakistani and American participants must depart and arrive in Pakistan through Islamabad. Proposals should include plans to house the Pakistani participants in Islamabad for at least one day to coordinate pre-departure and post program briefings with the Public Affairs Staff of the U.S. Embassy.

U.S. Based Programs: The recipients of grant awards will be responsible for implementing programs from four to six weeks in the United States for the Pakistani participants. It is envisioned that the Pakistani participants will be grouped in delegations of ten who will travel together to the United States. Groups of ten Pakistani participants will travel at different times throughout the grant period. Pakistani participants will be placed within relevant, reputable, legally-recognized U.S. organizations where they will gain hands-on experiences with the journalism and public administration professions in the United States, and provide the opportunity to establish relationships with U.S. professional counterparts for on-going collaboration. The grantee may want to engage with a partner or sub-grantee to arrange for the internship placement. The grantee should also include cultural enrichment activities as an integral part of the fellowship experience. Such activities could include outings to museums, historic sites, sporting events, cultural exhibits, local schools or community events, volunteering and other opportunities to experience American culture and diversity. Short-term homestays to give participants a personal experience of how typical Americans live are highly desirable.

Pakistan-Based Programs: Concurrent with the U.S.-based program for the Pakistani participants, proposals should also describe a selection process and logistics for a one to two-week Pakistan-based program for a smaller number of U.S. participants. The U.S. participants will be selected from among the internship host organizations for the Pakistani participants and will travel several months after the Pakistanis return home. The Pakistan-based program may include public presentations, on-site visits at Pakistani media outlets, and media interviews, if possible. All details and specifics on Pakistan-based programs will be arranged in close coordination with the Public Affairs Section of the U.S. Embassy in Islamabad. Proposals must show a convincing plan to work with ECA and the U.S. Embassy in Islamabad on this project, and to adhere to U.S. government security restrictions on travel within Pakistan.

Monitoring, Evaluation, and Reporting: The Bureau places high importance on monitoring and evaluation as a means of ensuring and measuring a project's success. Proposals must include a detailed monitoring and evaluation plan that assesses the impact of the project. Please refer to section. IV.3d.3. Project Monitoring and Evaluation below.

Follow-up activities: The grant recipients will develop enhancement activities that reinforce program goals after the participants' return to Pakistan. This includes informing participants of the Bureau's Alumni program, facilitating their enrollment, and encouraging their on-going participation. Please refer to the PSI for additional information on Alumni, Outreach, and Engagement.

Fiscal Management: Applicants must demonstrate competency to manage all financial aspects of the project, including participant costs and transparent arrangements of sub-grant relationships with partner organizations, if applicable.

Contact ECA: All interested organizations should contact ECA Program Officers Brent Beemer or Adam Meier before the submission of proposals. ECA will also put the organizations in contact with appropriate colleagues at the U.S. Embassy in Islamabad.

Brent Beemer: 202–632–6067, *BeemerBT@state.gov*

Adam Meier: 202–632–6071, *MeierAW2@state.gov*

Specific Program Details:

Project One: Professional Partnerships: Journalism

This program will provide approximately 100–140 participants from Pakistan the opportunity to study and take an active part in journalism as practiced in the United States. Successful programs will achieve the following:

- Show journalists the professional approaches to journalism as practiced in the United States and Pakistan, how journalists in both countries try to carry out their profession in an ethical and effective way, and how journalists can become leaders within the journalism field.
- Establish structured interaction among American and Pakistani participants designed to develop enduring professional ties and lasting partnerships.
- Provide an opportunity for all participants in the program to do reporting on the exchange itself, as well as on the countries and individuals involved.

Proposals should include a comprehensive three to four-week U.S.-based group educational and internship program for media professionals. One grant will be awarded for this project for a period of two to three years.

Competitive proposals will demonstrate experience and contacts with relevant media and organizations that specialize in journalism to program the U.S. components of this program. If a subcontractor is proposed for the internship placement, its experience and relevance with media/journalism needs to be demonstrated. Competitive proposals will also demonstrate an understanding of the current state of broadcast and print media in Pakistan in major cities as well as in more remote areas.

Each U.S.-based component should begin with a group orientation (preferably in Washington, DC) with trainings, lectures, and site visits to introduce participants to the basic craft of journalism, as practiced in the United States. Investigative reporting, ethics, and the business of journalism in the United States should be included. Additionally, an overview of U.S. government structures, the political process, and the "third wheel of government" role that the media plays in the United States should be offered. This should be followed by hands-on internship components at appropriate host U.S. media outlets to see these practices at work. Internships should be developed for small groups consisting of not more than three persons. The program will also encourage Pakistani journalists to use the program to do on-site reporting from the United States that can be of benefit to their home media outlets. A final de-briefing session in Washington, DC, for each

group should also be included in the proposal. ECA will facilitate on-the-record interviews with prominent U.S. officials in Washington, DC, as well.

Audience: Participants may be reporters, editors, and/or media managers, and may be from print, television, radio, or online media outlets. Participants should have at least five years of active journalistic experience. NOTE: Groups should not be made up of mixed media types. Print journalists should be in groups that are separate from those with broadcast journalists. In this way, the U.S. program can be based on specific issues pertaining to the various media types, and internships will be easier to arrange.

Pakistan Recruitment and Selection: Recruitment and selection for this program in Pakistan is to be closely coordinated with the Public Affairs Section of the U.S. Embassy in Islamabad, starting with obtaining official permission to recruit within Pakistan. Proposals can include information on a proposed in-country partner organization that would recruit program participants, and include a proposed plan and budget for this recruitment and selection. However, applicants may ultimately be asked to work with an alternate organization recommended by the Public Affairs Section in Islamabad on the recruitment of program participants. In either case, final selections (including possibly interviews of program finalists) should be done in conjunction with the Public Affairs Section.

All participants must be approved by ECA and the Public Affairs Section.

Project Two: Professional Partnerships: Public Administration

This program will provide approximately 80–100 participants from Pakistan and the United States the opportunity to study public administration techniques and processes in both countries and for Pakistani professionals to do internships with public administration professionals in the U.S. Successful programs will achieve the following:

- Demonstrate Pakistani and American public administration systems and approaches each country uses at the federal, regional, and local levels.
- Share strategies employed by American and Pakistani professionals to counter corruption and bureaucratic entanglements in public administration.
- Establish structured interaction among American and Pakistani participants designed to develop enduring professional ties.

Proposals should include a comprehensive three- to four-week U.S.-based group educational and internship program for public administrative professionals. One grant will be awarded for this project for a period of two to three years.

Competitive proposals will demonstrate experience and contacts with relevant public administration professionals, organizations, and educational institutes to program the U.S. components of this program. If a subcontractor is proposed for the internship placement, its experience and relevance with public administration needs to be explained. Competitive proposals should also demonstrate an understanding of the structure of the Pakistani government and civil service.

Each U.S.-based component will begin with a group orientation (preferably in Washington, DC) with workshops, lectures, and site visits to introduce participants to the basics of public administration in the United States. This should be followed by hands-on internship components at appropriate host U.S. work sites to see these practices at work. Internships should be developed for small groups consisting of not more than three persons. A final de-briefing session in Washington, DC, for each group should also be included in the proposal.

Audience: Participants should be public administration professionals, who currently hold positions within administrative bodies, and have at least five years of active experience in the field. **Note:** Pakistani groups should be arranged according to the level of public administration in which they work. Proposals should demonstrate an ability to implement programs based on all three levels of public administration—federal, provincial, and local.

Pakistan Recruitment and Selection: Recruitment and selection for this program in Pakistan is to be closely coordinated with the Public Affairs Section in Islamabad, starting with obtaining official permission to recruit within Pakistan. Proposals can include information on a proposed in-country partner organization that would recruit program participants, and include a proposed plan and budget for this recruitment and selection. However, applicants may ultimately be asked to work with an alternate organization recommended by the Public Affairs Section in Islamabad to recruit program participants. In either case, final selections (including possible interviews of program finalists) should be done in conjunction with the Public Affairs Section. All participants must be approved by ECA and the Public Affairs Section.

II. Award Information

Type of Award: Grant Agreement
Fiscal Year Funds: 2010
Approximate Total Funding: $3,700,000
Approximate Number of Awards: Two
Approximate Average Award:
Journalism Program: $2,200,000
Public Administration Program: $1,500,000
Anticipated Award Date: August 1, 2010
Anticipated Project Completion Date: September 1, 2013
Additional Information: At this time, support for this program is being provided from special one-time FY 2009/FY 2010 supplemental funds that have been appropriated to the Department. In the event that additional funds become available in fiscal years 2011 and 2012, and pending successful implementation of the FY 2010 funded program, ECA reserves the right to renew this grant for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making two awards (Journalism Program: $2,200,000 and Public Administration Program: $1,500,000) to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Technical Eligibility: Applicants may not submit more than one proposal in this entire competition. Applicants that do so will be declared technically ineligible and will receive no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Office of Citizen Exchanges, ECA/PE/C, SA–5, Third Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504, (202) 632–6067, *BeemerBT@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/EUR–SCA–10–32 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Brent Beemer or Adam Meier and refer to the Funding Opportunity Number ECA/PE/C/EUR–SCA–10–32 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and

Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, demonstrating concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

IV.3e.2a. Travel. International and domestic airfare; airline baggage and seat fees; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

IV.3e.2b. Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. *Domestic per diem rates* may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17943.* ECA requests applicants to budget realistic costs that

reflect the local economy and do not exceed Federal per diem rates. *Foreign per diem rates* can be accessed at: *http://aoprals.state.gov/content.asp?content_id=184&menu_id=78.*

IV.3e.2c. Interpreters. As stated previously, ECA anticipates that most participants coming to the U.S. on this program will not have command of English. ECA is requiring that eventual award recipients ask ECA to assign State Department interpreters for this project. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both "lodging" and "M&IE") and "home-program-home" transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

IV.3e.2d. Book and Cultural Allowances. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

IV.3e.2e. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

IV.3e.2f. Room rental. The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

IV.3e.2g. Materials. Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

IV.3e.2h. Equipment. Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

IV.3e.2i. Working meal. Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered "participants."

IV.3e.2j. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

IV.3e.2k. Health Insurance. Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

IV.3e.2l. Wire transfer fees. When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

IV.3e.2m. In-country travel costs for visa processing purposes. Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

IV.3e.2n. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources. Please also include in the administrative portion of your budget plans to travel to Washington, DC, to meet with your program officer within the first 45 days after the grant has been awarded. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: April 9, 2010.

Reference Number: ECA/PE/C/EUR–SCA–10–32.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and 10 copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/EUR–SCA–10–32,

Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the "Get Started" portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning and Ability to Achieve Objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Cost-effectiveness and Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants, http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one electronic copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Brent Beemer or Adam Meier, Office of Citizen Exchanges, ECA/PE/C, Third Floor SA–5, Third Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

Brent Beemer: 202–632–6067, *BeemerBT@state.gov.*

Adam Meier: 202–632–6071, *MeierAW2@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/EUR–SCA–10–32.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 2, 2010.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–5272 Filed 3–10–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6917]

Culturally Significant Objects Imported for Exhibition Determinations: "Nolde: Except Ye Become as Little Children"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "Nolde: Except Ye Become as Little Children," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the object at the Nelson-Atkins Museum of Art, Kansas City, MO, from on or about March 22, 2010, until on or about July 20, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these

Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: March 3, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–5266 Filed 3–10–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6918]

Waiver of Restriction on Assistance to Cambodia

Pursuant to section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117) ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7086(c)(1) of the Act with respect to the Government of Cambodia, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register.**

Dated: March 1, 2010.

Jacob J. Lew,

Deputy Secretary for Management and Resources.

[FR Doc. 2010–5261 Filed 3–10–10; 8:45 am]

BILLING CODE 4710–30–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0022]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on December 16, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 12, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0022.

FOR FURTHER INFORMATION CONTACT: Gye Aung, 202–366–2167, Office of Federal Lands Highway, Federal Highway Administration, Department of Transportation, East Building, Room E61 339, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: Federal Lands Highway Program.

OMB Control #: 2125–0598.

Background: Title 23 U.S.C. 204 requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway Program (FLHP). A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods. This data collection clearance addresses the management systems for the National Park Service (NPS) and the Park Roads and Parkways (PRP) Program; Bureau of Indian Affairs (BIA) and the Indian Reservation Roads (IRR) Program; Fish and Wildlife Service (FWS) and the Refuge Roads (RR) Program; and Forest Service (FS) and the Forest Highway (FH) Program.

Outputs from the management systems are important tools for the development of transportation plans and transportation improvement programs, and in making project selection decisions consistent with 23 U.S.C. 204. Further, management system outputs also provide important information to the FHWA for their stewardship and oversight roles for the Park Roads and Parkways, Indian Reservation Roads, Refuge Roads, and Forest Highway Programs. The data collection required to implement these management systems supports the DOT Strategic Plan. The proposed data collection also directly supports the FHWA's Initiatives of Safety, Congestion Mitigation, and Environmental Stewardship and Streamlining that represent the three important strategic planning and performance goals for the agency.

The National Park Service, Bureau of Indian Affairs, Fish and Wildlife Service, and Forest Service are continuing to implement the required management systems and the associated information collections. Completion of this phase-in of the management systems is expected to occur during the time period covered by this information collection, and the average annual burden estimates are based on expected increases in the overall burden over that time period. The management systems vary in complexity among the four agencies and reflect differences in the characteristics of the transportation systems involved such as size, ownership, and eligibility for inclusion in the program. These variations result in differences among the agencies in the expected number of respondents to the information collection, and in the anticipated time necessary to respond to the information collection.

Typical information that might be collected for the management systems includes:

- Traffic information including volumes, speeds, and vehicle classification;
- Pavement features such as number of lanes, length, width, surface type, functional classification, and shoulder information; and pavement condition information such as roughness, distress, rutting, and surface friction;
- Bridge features such as deck width, under/over-clearance, details of structural elements such as girders, joints, railings, bearings, abutments, and piers; and information on the condition of the bridge elements sufficient to describe the nature, extent, and severity of deterioration;

• Safety information such as crash records, crash rates, and an inventory of safety appurtenances such as signs and guardrails; or

• Congestion measures such as roadway level of service or travel delay.

Respondents to the information collection might be collecting and submitting information in one or more of these categories for the portion of their transportation system that is covered under the FLHP. For example, this might include the collection and submission of these types of information for State or county-owned roads that are Forest Highways or Indian Reservation Roads owned by Indian Tribal Governments. Typically, the respondents would collect information each year on a portion of their system. Burden estimates have been developed using this assumption combined with an estimate of the time needed to collect and provide the information.

Respondents: The estimated average annual number of respondents for the management systems for each of the agencies addressed by this information collection is:

NPS management systems—35 States and 40 Metropolitan Planning Organizations (MPOs), regional transportation planning agencies, counties, local or tribal governments.

BIA management systems—35 States and 50 MPOs, regional transportation planning agencies, counties, local or tribal governments.

FWS management systems—35 States and 40 MPOs, regional transportation planning agencies, counties, local or tribal governments.

FS management systems—35 States and 50 MPOs, regional transportation planning agencies, counties, local or tribal governments.

Frequency: Annual.

Estimated Average Annual Burden per Response:

NPS management systems—Approximately 40 hours per respondent.

BIA management systems—Approximately 60 hours per respondent.

FWS management systems—Approximately 20 hours per respondent.

FS management systems—Approximately 60 hours per respondent.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 14,700 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 5, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–5245 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0021]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on December 16, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 12, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0021.

FOR FURTHER INFORMATION CONTACT: Ken Epstein, 202–366–2157, Office of Safety Design, Federal Highway Administration, Department of Transportation, East Building, Room E71–113, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Developing and Recording Costs for Railroad Adjustments.

OMB Control Number: 2125–0521.

Background: Under 23 U.S.C. 130, the FHWA reimburses the State highway agencies when they have paid for the cost of projects that (1) eliminate hazards at railroad/highway crossings, or (2) adjust railroad facilities to accommodate the construction of highway projects. The FHWA requires the railroad companies to document their costs incurred for adjusting their facilities. The railroad companies must have a system for recording labor, materials, supplies, and equipment costs incurred when undertaking the necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company, and in turn FHWA reimburses the State for its payment to the railroad company.

Respondents: Approximately 135 railroad companies are involved in an average of 10 railroad/highway projects per year, total frequency is 1,350 railroad adjustments.

Frequency: Annually.

Estimated Average Burden per Response: The average number of hours required to calculate the railroad adjustment costs and maintain the required records per adjustment is 12 hours.

Estimated Total Annual Burden Hours: The FHWA estimates that the total annual burden imposed on the public by this collection is 16,200 hours.

Authority: 23 U.S.C. 121, 130; 23 CFR 140 Subpart I; the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On March 5, 2010.

Juli Huynh,

Chief, Management Programs, and Analysis Division.

[FR Doc. 2010–5246 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0019]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to

renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on December 17, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 12, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2010–0019.

FOR FURTHER INFORMATION CONTACT: Gary Jensen, 202–366–2048 or Kenneth Petty, 202–366–6654, Office of Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: Transportation, Community, and System Preservation Program Grant Application. Delta Region Transportation Development Program Grant Application. Transportation Planning Excellence Awards Nomination Form.

OMB Control #: 2125–0615.

Background: Transportation, Community, and System Preservation Program Grant Application: Section 1117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) provides funding for the Transportation, Community, and System Preservation (TCSP) Program. The TCSP Program is a comprehensive initiative of research and grants to investigate the relationships between transportation, community, and system preservation plans and practices and identify sector-based initiatives to improve such relationships. States, metropolitan planning organizations, local governments, and tribal governments are eligible for discretionary grants to carry out eligible projects to integrate transportation, community, and system preservation plans and practices that:

- Improve the efficiency of the transportation system of the United States.
- Reduce environmental impacts of transportation.
- Reduce the need for costly future public infrastructure investments.
- Ensure efficient access to jobs, services, and centers of trade.
- Examine community development patterns and identify strategies to encourage private sector development patterns and investments that support these goals.

The 2-page TCSP grant application is the tool used to collect the necessary information needed to successfully submit eligible TCSP Program projects to the Secretary of Transportation for approval and for the distribution of TCSP funds. The TCSP grant application includes four parts: (A) Project Information—General contact and funding information, (B) Project Abstract—Overview of the purpose and intent of project, (C) Project Narrative—Description of the project and the expected results, and (D) Project Eligibility—Discussion of how the project meets statutory eligiblity.

The TCSP Program is a discretionary program. However in some years, the projects awarded TCSP Program funding have been designated by Congress. In order to comply with Congressional-designation, the FHWA Division offices will continue to be asked to identify the intended recipient of the TCSP designated grant. The specified grant recipient would then be asked to complete the grant application each fiscal year that they receive TCSP funding and submit it electronically.

Background: Delta Region Transportation Development Program Grant Application: Section 1308 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) provides funding for the Delta Region Transportation Development Program (DRTDP). The DRTDP supports and encourages multistate transportation planning and corridor development, provides for transportation project development, facilitates transportation decision making and supports transportation construction in the eight States comprising the Delta Region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee). A State transportation department or metropolitan planning organization in a Delta Region State may receive and administer funds provided under the program.

The 2-page DRTDP grant application is the tool used to collect the necessary information needed to successfully submit eligible DRTDP projects to the Secretary of Transportation for approval and for the distribution of DRTDP funds. The DRTDP grant application collects project information including general contact and funding information, a narrative project description, and information regarding statutory eligibility.

The DRTDP Program is a discretionary program. However in some years, the projects awarded DRTDP Program funding has been designated by Congress. In order to comply with Congressional-designation, the FHWA Division offices will continue to be asked to identify the intended recipient of the DRTDP designated grant. The specified grant recipient would then be asked to complete the grant application each fiscal year that they receive DRTDP funding and submit it electronically.

Background: Transportation Planning Excellence Awards Nomination Form: The Transportation Planning Excellence Awards (TPEA) Program is a biennial awards program developed by the FHWA and the Federal Transit Administration (FTA) to recognize outstanding initiatives across the country to develop, plan and implement innovative transportation planning practices. The program is co-sponsored by the American Planning Association.

The on-line TPEA nomination form is the tool for submitters to nominate a process, group, or individual involved in a project or process that has used the FHWA and/or the FTA funding sources to make an outstanding contribution to the field of transportation planning. The information about the process, group or individual provided by the submitter may be shared and published if that submission is selected for an award.

The TPEA Program is a biennial awards program and individuals will be asked to submit nominations via the online form every two years. The participants will provide their information by means of the Internet.

Respondents: For the TCSP Program, 200 participants annually. For the DRTDP Program, 20 participants annually. For the TPEA, 150 participants biennially.

Frequency: For the TCSP Program, grant applications are solicited on an annual basis. For the DRTDP, grant applications are solicited on an annual basis. For the TPEA, nominations are solicited every two years.

Estimated Average Burden per Response: For the TCSP Program, approximately 120 minutes. For the

DRTDP, approximately 90 minutes. For the TPEA Program, approximately 90 minutes.

Estimated Total Annual Burden Hours: For the TCSP Program, 400 hours annually. For the DRTDP, 30 hours annually. TPEA, 225 hours in the first year and 225 hours in the third year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 5, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–5247 Filed 3–10–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0020]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 18, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 12, 2010.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA 2010–0020.

FOR FURTHER INFORMATION CONTACT: Janine Ashe, 202–366–9057, Office of Civil Rights, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590,

SUPPLEMENTARY INFORMATION:

Title: Federal-Aid Highway Construction Equal Employment Opportunity.

Background: Title 23, Part 140(a), requires the FHWA to ensure equal opportunity regarding contractors' employment practices on Federal-aid highway projects. To carry out this requirement, the contractors must submit to the State Transportation Agencies (STAs) on all work being performed on Federal-aid contracts during the month of July, a report on its employment workforce data. This report provides the employment workforce data on these contracts and includes the number of minorities, women, and non-minorities in specific highway construction job categories. This information is reported on Form PR–1391, Federal-Aid Highway Construction Contractors Summary of Employment Data. The statute also requires the STAs to submit a report to the FHWA summarizing the data entered on the PR–1391 forms. This summary data is provided on Form PR–1392, Federal-Aid Highway Construction Contractors Summary of Employment Data. The STAs and FHWA use this data to identify patterns and trends of employment in the highway construction industry, and to determine the adequacy and impact of the STA's and FHWA's contract compliance and on-the-job (OJT) training programs. The STAs use this information to monitor the contractors-employment and training of minorities and women in the traditional highway construction crafts. Additionally, the data is used by FHWA to provide summarization, trend analyses to Congress, DOT, and FHWA officials as well as others who request information relating to the Federal-aid highway construction EEO program. The information is also used in making decisions regarding resource allocation; program emphasis; marketing and promotion activities; training; and compliance efforts.

Respondents: 11,077 annual respondents for form PR–1391, and 52 STAs annual respondents for Form PR–1392, total of 11,129.

Frequency: Annually.

Estimated Average Burden per Response: FHWA estimates it takes 30 minutes for Federal-aid contractors to complete and submit Form PR–1391 and 8 hours for STAs to complete and submit Form PR–1392.

Estimated Total Amount Burden Hours: Form PR–1391—5,539 hours per year; *Form PR–1392*—416 hours per year, total of 5,955 hours annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 5, 2010.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2010–5249 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Washington, DC Metropolitan Area Special Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area. OMB has granted this collection a six-month clearance expiring in August, 2010, in order for FAA to provide clarifying details about the collection methods; this notice is to correspond with an immediate resubmission to OMB for full three-year clearance.

DATES: Please submit comments by May 10, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauneyfaa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Washington, DC Metropolitan Area Special Flight Rules.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2 120–0706.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 17,097 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 2.9 hours per response.

Estimated Annual Burden Hours: An estimated 49,223 hours annually. Abstract: This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 2, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–4945 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0016]

Highway Safety Programs; Conforming Products List of Evidential Breath Alcohol Measurement Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice updates the Conforming Products List (CPL) published in the **Federal Register** on December 17, 2007 (72 FR 71480) for instruments that conform to the Model Specifications for Evidential Breath Alcohol Measurement Devices (58 FR 48705).

DATES: *Effective Date:* March 11, 2010.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Ms. De Carlo Ciccel, Behavioral Research Division, NTI–131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone; (202) 366–1694. *For legal issues:* Mr. David Bonelli, Office of Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; *Telephone:* (202) 366–5834.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices (Model Specifications), and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice.

On September 17, 1993, NHTSA published a notice to amend the Model Specifications (58 FR 48705) and to update the CPL. That notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC, respectively. These devices are identified on the CPL with an asterisk. Additionally, that notice includes a test for the presence of acetone and an expanded definition of alcohol to include other low molecular weight alcohols *e.g.,* methyl or isopropyl. Thereafter, NHTSA has periodically updated the CPL with those breath instruments found to conform to the Model Specifications. The most recent update to the CPL was published December 17, 2007 (72 FR 71480).

The CPL published today adds four (4) new instruments and updates the mobility status of one (1) existing instrument that have been evaluated and found to conform to the Model Specifications, as amended on September 17, 1993, for mobile and non-mobile use. This update also makes minor changes to instrument names and a change to a company location. In alphabetical order by company, they are:

(1) The "Alcotest 7510" manufactured by Draeger Safety, Inc., Irving, Texas. This is a hand-held instrument intended for use in stationary or roadside operations. It uses a fuel cell detector and is battery powered.

(2) The "Alcotest 9510" manufactured by Draeger Safety, Inc., Irving, Texas. This instrument previously conformed to the model specifications and was listed as a stationary device. After further testing, this instrument conforms to the specifications for stationary or roadside operations. This instrument is portable with a detachable carrying handle. It can be powered by either 110 volts AC or 12 volts DC, such as from a car battery. The Alcotest 9510 uses fuel cell and infra-red type sensors.

(3) The "Alco-Sensor V" manufactured by Intoximeters, Inc., St. Louis, Missouri. This is a hand-held instrument intended for use in stationary or roadside operations. It uses a fuel cell detector and is battery powered.

(4) The "Evidenzer" manufactured by Nanopuls AB, Uppsala, Sweden. This instrument is intended for use in stationary or roadside operations. The Evidenzer is a non-dispersive infra-red device that is powered by either 120 volts AC power or 12 volts DC, such as from a car battery.

(5) The "Mark V Alcovisor" manufactured by PAS International, Fredericksburg, Virginia. This is a hand-held instrument that uses a fuel cell detector and is battery powered.

Minor changes include adding "Intox" before or in the name of EC/IR instruments by Intoximeters. Draeger Safety, Inc. address changed from Durango, Colorado to Irving, Texas.

The CPL has been updated to include the five instruments and the minor changes identified above.

In accordance with the foregoing, the CPL is therefore updated, as set forth below.

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp., Mississauga, Ontario, Canada:		
Alert J3AD *	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
Alert J4X.ec	X	X
PBA3000C	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer*	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, Kentucky:		
Intoxilyzer Model:		
200	X	X
200D	X	X
240 (aka: Lion Alcolmeter 400+ outside the U.S.)	X	X
300	X	X
400	X	X
400PA	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/3/8″ ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
8000	X	X
PAC 1200*	X	X
S–D2	X	X
S–D5 (aka: Lion Alcolmeter SD–5 outside the U.S.)	X	X
Draeger Safety, Inc. (aka: National Draeger) Irving, Texas:		
Alcotest Model:		
6510	X	X
6810	X	X
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
7510	X	X
9510	X	X
Breathalyzer Model:		
900	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
EnviteC by Honeywell GmbH, Fond du Lac, Wisconsin:		
AlcoQuant 6020	X	X
Gall's Inc., Lexington, Kentucky:		
Alcohol Detection System-A.D.S. 500	X	X
Guth Laboratories, Inc., Harrisburg, Pennsylvania:		
Alcotector BAC–100	X	X
Alcotector C2H5OH	X	X
Intoximeters, Inc., St. Louis, Missouri:		
Photo Electric Intoximeter*		X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
3000 D *	X	X
3000 DFC *	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)	X	X
Alco-Sensor IV	X	X
Alco-Sensor IV XL	X	X
Alco-Sensor V	X	X
Alco-Sensor AZ	X	X
Alco-Sensor FST	X	X
Intox EC/IR	X	X
Intox EC/IR II	X	X
Intox EC/IR II (Enhanced with serial number 10,000 or higher)		X
Portable Intox EC/IR	X	X
RBT–AZ	X	X
RBT–III	X	X
RBT III–A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
Komyo Kitagawa, Kogyo, K.K., Japan:		
Alcolyzer DPA–2 *	X	X
Breath Alcohol Meter PAM 101B *	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, Colorado:		
PBA 3000B	X	X
PBA 3000-P *	X	X
PBA 3000C	X	X
Alcohol Data Sensor	X	X
Phoenix	X	X
Phoenix 6.0	X	X
EV 30	X	X
FC 10	X	X
FC 20	X	X
Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom:		
Alcolmeter Model:		
300	X	X
400	X	X
400+ (aka: Intoxilyzer 240 in the U.S.)	X	X
SD–2 *	X	X
SD–5 (aka: S–D5 in the U.S.)	X	X
EBA *	X	X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernardino, California:		
Alco-Analyzer Model:		
1000 *		X
2000 *		X
Nanopuls AB, Uppsala, Sweden:		
Evidenzer	X	X
National Patent Analytical Systems, Inc., Mansfield, Ohio:		
BAC DataMaster (with or without the Delta-1 accessory)		
BAC Verifier DataMaster (w/or without the Delta-1 accessory)	X	X
DataMaster cdm (w/or without the Delta-1 accessory)	X	X
DataMaster DMT	X	X
Omicron Systems, Palo Alto, California:		
Intoxilyzer Model:		
4011 *	X	X
4011AW *	X	X
PAS International, Fredericksburg, Virginia		
Mark V. Alcovisor	X	X
Plus 4 Engineering, Minturn, Colorado:		
5000 Plus 4 *	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, New Jersey:		
Alcomat *	X	X
Alcomat F *	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
Smith and Wesson Electronics, Springfield, Massachusetts:		
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, Michigan:		
AlcoData	X	X
Seres Alco Master	X	X
Seres Alcopro	X	X
Stephenson Corp.:		
Breathalyzer 900*	X	X
Tokai-Denshi Inc., Tokyo, Japan:		
ALC–PRO II (US)	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, California:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, New York:		
BAC Verifier*	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(Authority: 23 U.S.C. 403; 49 CFR 1.50; 49 CFR Part 501).

Issued on: March 5, 2010.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2010–5242 Filed 3–10–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Order Granting Temporary Exemptions From Certain Government Securities Act Provisions and Regulations in Connection With a Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments

AGENCY: Department of the Treasury, Office of the Assistant Secretary for Financial Markets.

ACTION: Notice of temporary exemptions.

SUMMARY: The Department of the Treasury (Treasury) is granting temporary exemptions from certain Government Securities Act provisions and regulations regarding the central clearing of credit default swaps that reference government securities. The temporary exemptions were requested by ICE Trust U.S. LLC. Treasury is also soliciting public comment on this order.

DATES: *Effective Date* March 7, 2010.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Lee Grandy, or Kevin Hawkins, Bureau of the Public Debt, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: The following is Treasury's order granting temporary exemptions:

I. Introduction

Treasury regulations govern transactions in government securities [1] by government securities brokers [2] and government securities dealers [3] under Section 15C of the Securities Exchange Act of 1934 (Exchange Act), as amended by the Government Securities Act of 1986 (GSA). These regulations impose obligations concerning financial responsibility, protection of customer securities and balances, and recordkeeping and reporting.

Treasury has issued multiple orders providing temporary conditional exemptions to permit ICE Trust U.S. LLC (ICE Trust) to clear and settle transactions in credit default swaps (CDS) [4] that reference government securities (collectively, "the ICE Trust orders"). Specifically, on March 6, 2009, Treasury granted a temporary exemption from certain GSA provisions and regulations to ICE Trust, certain ICE Trust participants, and certain eligible contract participants (ECPs) [5] (the March 6, 2009 order).[6] In the same order Treasury also granted a limited temporary exemption from certain GSA regulatory requirements to government securities brokers and government securities dealers that are not financial institutions. On December 7, 2009,

[1] The term *government securities* is defined at 15 U.S.C. 78c(a)(42).

[2] A *government securities broker* generally is "any person regularly engaged in the business of effecting transactions in government securities for the account of others," with certain exclusions. 15 U.S.C. 78c(a)(43).

[3] A *government securities dealer* generally is "any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise," with certain exclusions. 15 U.S.C. 78c(a)(44).

[4] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity (reference entity) or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities.

[5] ECPs are defined in Section 1a(12) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq*. The use of the term ECPs in this order refers to the definition of ECPs in effect on the date of this order, and excludes persons that are ECPs under Section 1a(12)(C). The temporary exemption provided to ECPs in this order also applies to interdealer brokers that are ECPs.

[6] 74 FR 10647, March 11, 2009 Order Granting Temporary Exemptions from Certain Provisions of the Government Securities Act and Treasury's Government Securities Act Regulations in Connection with a Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments, available at: *http://www.treasurydirect.gov/instit/statreg/gsareg/gsareq_treasexemptiveorder309.pdf.*

Treasury extended the expiration date of these temporary exemptions until March 7, 2010 (the December 7, 2009 order).[7] Also, on January 28, 2010, Treasury granted a temporary, conditional exemption[8] until March 7, 2010, to certain ICE Trust clearing members and certain ECPs to accommodate using ICE Trust to clear customer CDS transactions (the January 28, 2010 order).

On February 23, 2010, Treasury received a letter (the request)[9] from ICE Trust asking that Treasury extend the temporary exemptions in the March 6, 2009 and January 28, 2010 orders. The request relates to the exemption for ICE Trust clearing members, including certain entities affiliated with ICE Trust clearing members,[10] and certain ECPs from provisions of the Exchange Act governing government securities transactions, to the extent such provisions would otherwise apply to such ICE Trust clearing members and ECPs in regard to cleared CDS.[11] The request also relates to the temporary exemption previously granted to registered or noticed government securities brokers and government securities dealers that are not financial institutions.

ICE Trust has stated that the existing orders have allowed the financial industry to advance the goal of central clearing of CDS. It also states that the orders should be extended because allowing them to expire will jeopardize the ability of ICE Trust to continue operations; that any regulatory risk to the use of ICE Trust as a central counterparty (CCP) could create a significant barrier to the goal of encouraging the use of CCPs in the clearing of CDS; and that it would be premature to allow the orders to expire in the absence of a clear framework for continuing ICE Trust's service. ICE Trust also notes that the orders provide regulatory agencies with adequate authority to monitor ICE Trust's activities, and that ICE Trust is also comprehensively monitored and regulated by state and federal banking supervisors.

Based on the facts presented and the representations made in the request,[12] Treasury is granting a temporary exemption to certain ICE Trust clearing members and certain ECPs from the GSA provisions in connection with using ICE Trust to clear both ICE Trust clearing members' proprietary and customer CDS transactions that reference government securities. Treasury is also granting a limited exemption from certain Treasury regulatory requirements for registered or noticed government securities brokers and government securities dealers that are not financial institutions with respect to both proprietary and customer CDS transactions that reference government securities. The exemptions are subject to certain conditions and will expire on November 30, 2010, unless Treasury renews, revokes, or modifies them. These temporary exemptions are consistent with an extension of temporary exemptions the Securities and Exchange Commission (SEC) recently granted to ICE Trust related to the central clearing of CDS.[13]

In providing these temporary exemptions from certain provisions of Section 15C of the Exchange Act, Treasury is not determining whether particular CDS are "government securities" under 15 U.S.C. § 78c(a)(42).

II. Discussion

A. ICE Trust's Clearing Activity

In its request for an extension, ICE Trust represents that, other than as discussed in its request, there have been no material changes to the operations of ICE Trust and the representations made in their previous letters requesting the relief Treasury provided in the ICE Trust orders.

The request states that, to date, the products eligible for clearing at ICE Trust include CDS transactions involving certain indices and CDS contracts based on individual reference entities or securities (single-name CDS contracts) that meet ICE Trust's risk management and other criteria. The request also states that since the date of the March 2009 order, ICE Trust has cleared approximately $3.5 trillion in notional amount of index-based CDS contracts and approximately $10.3 billion in notional amount of single-name CDS contracts. We understand that to date, ICE Trust has not cleared any CDS contracts that reference U.S. government securities.

B. Conditional Temporary Exemption for Certain ICE Trust Clearing Members and Certain ECPs

In the March 6, 2009 order, Treasury concluded that the CCP clearing facility for CDS proposed by ICE Trust may increase transparency, enhance counterparty risk management, and contribute generally to the goal of mitigating systemic risk. Treasury further recognized the possibility that applying the GSA requirements to certain CDS market participants that are not registered or noticed government securities brokers or government securities dealers could deter some of them from using ICE Trust to clear CDS transactions where the CDS references a government security, and thereby reduce the potential systemic risk mitigation and other benefits of central clearing. Consistent with these findings, as well as with the public interest and the protection of investors, Treasury temporarily exempted ICE Trust, certain ICE Trust clearing members, and certain ECPs from the GSA provisions. For similar reasons, in the December 7, 2009 order Treasury extended these temporary exemptions until March 7, 2010.

Also, on January 28, 2010, Treasury granted until March 7, 2010, a temporary, conditional exemption to accommodate customer clearing. The

[7] 74 FR 64127, December 7, 2009 Order Extending Temporary Exemptions from Certain Government Securities Act Provisions and Regulations in Connection with a Request from ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, available at: *http://www.treasurydirect.gov/instit/statreg/gsareg/FR_Treasury_Order_ICE_Extension_(12–7–09).pdf.*

[8] 75 FR 4626, January 28, 2010 Order Granting a Temporary Exemption from Certain Government Securities Act Provisions and Regulations in Connection with a Request from ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments, available at: *http://www.treasurydirect.gov/instit/statreg/gsareg/TreasuryICEOrderFedRegisterJan282010.pdf.*

[9] Letter from Kevin McClear, General Counsel, ICE Trust to the Commissioner of the Public Debt, Van Zeck, February 23, 2010, available at: *http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

[10] ICE Trust stated that, for purposes of its request, an affiliate means an entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a clearing member.

[11] For purposes of this order, *cleared CDS* means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to ECPs (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this order (other than a person that is an ECP under paragraph (C) of that section)), and that references a government security.

[12] *See* note 9, *supra.* The temporary exemptions Treasury is granting in this order are based on representations made in the current request and previous requests from ICE Trust. Treasury recognizes, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if these temporary exemptions become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in cleared CDS associated with persons subject to the unavailable exemptions will remain unchanged, but no new positions can be established pursuant to the temporary exemptions until all of the underlying representations are again accurate.

[13] *See* the SEC's Web site at *http://www.sec.gov* for the recent Securities Exchange Act Release. Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments.

exemption was granted to certain ICE Trust clearing members and certain ECPs from the GSA provisions in connection with using ICE Trust to clear CDS transactions of their customers. Treasury recognized that facilitating the central clearing of CDS transactions, including those of ICE Trust clearing members' customers, will increase transparency, enhance counterparty risk management, and contribute generally to the goal of mitigating systemic risk.

Treasury finds that the circumstances upon which it issued the previous exemptions still exist and, therefore, Treasury believes that granting this temporary exemption is warranted and appropriate.

For these reasons, the Secretary finds that, it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to grant the conditional, temporary exemption set forth below. This exemption will expire on November 30, 2010, unless Treasury renews, revokes, or modifies it and is consistent with a recent extension of temporary exemptions the SEC granted related to a request from ICE Trust concerning central clearing of CDS.[14]

C. Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers That Are Not Financial Institutions

In its March 6, 2009 order, Treasury provided a temporary exemption for government securities brokers and government securities dealers that are not financial institutions from certain GSA regulations with respect to CDS transactions that are submitted to ICE Trust for clearance and settlement.

In crafting this temporary exemption, Treasury balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain government securities brokers and government securities dealers play in promoting market integrity and protecting customers. Treasury recognized that the full range of GSA requirements should not be applied immediately to government securities brokers and government securities dealers that engage in transactions involving CDS that reference a government security.

Accordingly, in light of the risk management and systemic benefits in continuing to facilitate CDS clearing by ICE Trust, the Secretary finds, pursuant to Section 15C(a)(5) of the Exchange Act, that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to grant a temporary exemption to registered or noticed government securities brokers and government securities dealers that are not financial institutions from the regulations in 17 CFR parts 402, 403, 404, and 405 except as circumscribed below.[15] Treasury is providing this temporary exemption to maintain consistency with the SEC's requirements applicable to registered broker-dealers with respect to CDS transactions that are submitted to ICE Trust for clearance and settlement. This exemption will expire on November 30, 2010, unless Treasury renews, revokes, or modifies it.

However, consistent with the March 6, 2009 order, this order does not exempt registered or noticed government securities brokers or government securities dealers from the following: (1) The capital requirements for registered government securities brokers and government securities dealers in part 402 of the GSA regulations (which are comparable to SEC Rule 15c3–1 on net capital); [16] (2) the provisions of part 403 of the GSA regulations that incorporate and modify SEC Rule 15c3–3 on reserves and custody of securities; (3) the provisions of parts 404 and 405 of the GSA regulations that incorporate and modify SEC Rules 17a–3 through 17a–5, 17h–1T and 17h–2T, on records and reports; and (4) the provisions of part 404 of the GSA regulations that incorporate and modify SEC Rule 17a–13 on quarterly security counts. This temporary exemption applies to these entities' transactions in cleared CDS.[17]

With respect to noticed government securities brokers and government securities dealers that are financial institutions, the GSA regulations generally adopt the appropriate regulatory agency rules for financial institutions that are comparable to the SEC rules to which the Treasury exemption does not apply. The GSA regulations also incorporate other rules of the appropriate regulatory agencies that are applicable to financial institutions. Consistent with Treasury's March 6, 2009 order, this temporary exemption does not apply to financial institution government securities brokers and government securities dealers, who should continue to comply with existing rules.

D. Consultations and Considerations

In ordering these temporary exemptions, Treasury has consulted with and considered the views of the staffs of the SEC, the Commodity Futures Trading Commission (CFTC), and the appropriate regulatory agencies for financial institutions.[18]

Treasury continues to believe that applying the GSA requirements to certain CDS market participants that are not registered or noticed government securities brokers or government securities dealers could deter some of them from using ICE Trust to clear CDS transactions where the CDS references a government security, thereby reducing the potential systemic risk mitigation and other benefits of central clearing. Treasury also continues to believe that, in order to avoid creating obstacles to the use of CCPs for CDS, the full range of GSA requirements generally should not be applied to government securities brokers and government securities dealers for transactions involving CDS that reference government securities. Moreover, Treasury continues to believe that it would be premature to allow the exemptions to expire.

Treasury bases this order on the facts and circumstances presented and representations made by ICE Trust in the request. ICE Trust has indicated that there have been no material changes to any of the facts or circumstances in its request for extension and expansion of the March 6, 2009 order that would cause such representations to no longer be materially accurate.

III. Solicitation of Comments

When Treasury issued the March 6, 2009 and January 28, 2010 orders, we solicited comment on all aspects of the temporary exemptions, and specifically requested comment as to the duration of the temporary exemptions and the appropriateness of the exemptive conditions. We received no comments.

In connection with this order, we reiterate our request for comments on the relief we are granting and whether the conditions we have placed on the relief adequately protect customer funds and securities from the threat posed by a clearing member's insolvency.

Treasury will continue to monitor ICE Trust's progress and the development of

[14] *See* note 13, *supra.*

[15] The rules in part 400 are excluded because they are rules of general application. The rules in part 401 are excluded because they cover existing exemptions. The rules in part 449 are excluded because they describe forms that are required by other rules.

[16] Part 402 does not apply to registered broker-dealers that are subject to Rule 15c3–1.

[17] *See* note 11, *supra.*

[18] The definition of *appropriate regulatory agency* with respect to a government securities broker or a government securities dealer is set out at 15 U.S.C. 78c(a)(34)(G). The definition includes the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of Thrift Supervision, and in limited circumstances the SEC.

CCPs for the CDS market and determine to what extent, if any, additional action might be necessary. For example, as circumstances warrant, certain conditions could be added, altered, or eliminated from this order.

Treasury also will continue to consult with the staffs of the SEC, the CFTC, and the appropriate regulatory agencies for financial institutions on this matter.

You may send comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 799 9th Street NW., Washington, DC 20239–0001. You may also send comments by e-mail to *govsecreg@bpd.treas.gov.* Please provide your full name and mailing address. You may download this order, and review the comments we receive, from the Bureau of the Public Debt's Web site at *http://www.treasurydirect.gov.* The order and comments also will be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

IV. Conclusion

It is hereby ordered, pursuant to Section 15C(a)(5) of the Exchange Act, that, until November 30, 2010:

(a) *Conditional Temporary Exemption for Certain ECPs and ICE Trust Clearing Members.*

(1) *Persons eligible.* This exemption is available to any ECP [19] and any ICE Trust clearing member except for: ICE Trust clearing members and ECPs that are registered or noticed as government securities brokers or government securities dealers under Section 15C(a)(1) of the Exchange Act; ECPs as defined in Section 1a(12)(C) of the Commodity Exchange Act; and ECPs that are not ICE Trust clearing members and that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for other persons.

(2) *Scope of exemption.* Subject to the conditions specified in paragraph (3) of this section, ECPs and ICE Trust clearing members, solely with respect to cleared CDS, are exempt from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder.

(3) *Conditions for ICE Trust clearing members.*

(i) Each ICE Trust clearing member relying on this exemption must be in material compliance with ICE Trust rules.

(ii) Each ICE Trust clearing member relying on this exemption that participates in the clearing of cleared CDS transactions on behalf of its customers must promptly provide a certification to ICE Trust that states that it is relying on the temporary exemption.

(4) *Additional conditions for certain ICE Trust clearing members.* Each ICE Trust clearing member relying on the exemption that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for U.S. persons (or for any persons if the ICE Trust clearing member is a U.S. clearing member)—other than for an affiliate that controls, is controlled by, or is under common control with the ICE Trust clearing member—also must comply with the following six conditions with respect to such activities:

(i) *No natural persons.* The U.S. persons (or any persons if the ICE Trust clearing member is a U.S. clearing member) for whom the ICE Trust clearing member receives or holds such funds or securities may not be natural persons.

(ii) *Disclosures.* The ICE Trust clearing member must disclose to such U.S. persons (or to any such persons if the ICE Trust clearing member is a U.S. clearing member) that: (A) the ICE Trust clearing member is not regulated by Treasury or the SEC with respect to activities covered by this exemption; (B) U.S. government securities broker and government securities dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the ICE Trust clearing member; (C) the insolvency law of the applicable jurisdiction may affect such persons' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding; and (D) if applicable, non-U.S. clearing members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons.

(iii) *Prompt transfer of funds and securities.* As promptly as practicable after receipt, the ICE Trust clearing member must transfer such funds and securities (other than those promptly returned to such other person) to: (A) the ICE Trust clearing member's Custodial Client Omnibus Margin Account at ICE Trust; or (B) an account held by a third-party custodian, subject to the requirements in paragraph (vi) of this section.

(iv) *Segregation until transfer.* To the extent there is any delay in transferring such funds and securities (collateral) to the third parties identified in paragraph (iii) of this section, the ICE Trust clearing member must segregate the collateral in a way that, pursuant to applicable law, is reasonably expected to protect such collateral from the ICE Trust clearing member's creditors. The ICE Trust clearing member must not permit persons for whom it receives or holds such funds and securities to "opt out" of such segregation even if regulations or laws otherwise would permit it.

(v) *Cooperation with SEC.* The ICE Trust clearing member must be in compliance with any request from the SEC for information, documents, or assistance related to CDS transactions cleared by ICE Trust.

(vi) *Requirements for third-party custodian account.* An ICE Trust clearing member that transfers customer assets to an account held by a third-party custodian under paragraph (iii) of this section must be in material compliance with the SEC's requirements set forth in its related exemptive order concerning third-party custodian accounts.[20]

(b) *Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers that are not Financial Institutions.*

Registered or noticed government securities brokers and government securities dealers that are not financial institutions are exempt from the regulations in 17 CFR parts 402, 403, 404, and 405. However, this order does not exempt registered or noticed government securities brokers or government securities dealers that are not financial institutions from the following:

(1) The capital requirements for registered government securities brokers and government securities dealers in part 402 of the GSA regulations (which are comparable to SEC Rule 15c3–1 on net capital);

(2) the provisions of part 403 of the GSA regulations that incorporate and modify SEC Rule 15c3–3 on reserves and custody of securities;

(3) the provisions of parts 404 and 405 of the GSA regulations that incorporate and modify SEC Rules 17a–3 through 17a–5, 17h–1T and 17h–2T, on records and reports; and

(4) the provisions of part 404 of the GSA regulations that incorporate and modify SEC Rule 17a–13 on quarterly security counts.

This temporary exemption applies to these entities' transactions in cleared CDS.

[19] *See* note 5, *supra.*

[20] *See* note 13 *infra.*

The temporary exemptions contained in this order are based on the facts and circumstances presented in the request and are conditioned on compliance with the terms of this order. These temporary exemptions could become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate or in the event of non-compliance. If the SEC were to withdraw or modify the terms of its order, Treasury may revoke or modify this order accordingly. The status of cleared CDS submitted to ICE Trust prior to such change would be unaffected.

V. Paperwork Reduction Act

This order includes two requests that fall within the definition of "information" under the regulations implementing the Paperwork Reduction Act (PRA). 5 CFR 1320.3(h). One is the certification that ICE Trust clearing members must provide to ICE Trust under paragraph (a)(3)(ii) of this order, concerning their reliance on Treasury's temporary exemption. The second is the disclosures that certain ICE Trust clearing members must make if they receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for U.S. persons, under paragraph (a)(4)(ii) of this order.

However, Treasury at this time estimates that there will not be 10 or more ICE Trust clearing members that will be relying on this order to clear CDS that reference a government security. As a result, these requests do not constitute "collections of information" subject to the PRA. 5 CFR 1320.3(c). Therefore, the PRA does not apply to this order.

Mary J. Miller,

Assistant Secretary for Financial Markets.

[FR Doc. 2010–5320 Filed 3–10–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[RP–155431–05]

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning RP–155431–05, Revenue Procedure Regarding 6707/6707A Rescission Request Procedures.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Dawn E. Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure Regarding 6707/6707A Rescission Request Procedures.

OMB Number: 1545–2047.

Revenue Procedure Number: 155431–05.

Abstract: This revenue procedure provides guidance to persons who are assessed a penalty under section 6707A or 6707 of the Internal Revenue Code, and who may request rescission of those penalties from the Commissioner.

Current Actions: There are no changes being made to this revenue procedure.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 859.

Estimated Time per Respondent: 0.5 hours.

Estimated Total Annual Burden Hours: 429.50.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 26, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5185 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8868

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8868, Application for Extension of Time To File an Exempt Organization Return.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or

through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File an Exempt Organization Return.

OMB Number: 1545–1709.

Form Number: 8868.

Abstract: Sections 6081 and 1.6081 of the Internal Revenue Code and regulations permit the Internal Revenue Service to grant a reasonable extension of time to file a return. Form 8868 provides the necessary information for a taxpayer to apply for an extension to file a fiduciary or certain exempt organization return.

Current Actions: There are no changes being made to the form at this time.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 248,932.

Estimated Time per Respondent: 5 hrs., 47 mins.

Estimated Total Annual Burden Hours: 1,453,638.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5186 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4466

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax.

DATES: Written comments should be received on or before April 26, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, at (202) 622–3933, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Dawn.E.Bidne@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

OMB Number: 1545–0170.

Form Number: Form 4466.

Abstract: Section 6425(a)(1) of the Internal Revenue Code provides that a corporation may file an application for an adjustment of an overpayment of estimated income tax. Form 4466 is used for this purpose. The IRS uses the information on Form 4466 to process the claim, so the refund can be issued.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 16,125.

Estimated Time per Respondent: 4 hours, 44 minutes.

Estimated Total Annual Burden Hours: 76,433.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5187 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2001–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2001–1, Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

OMB Number: 1545–1716.

Notice Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 20.

Estimated Average Time per Respondent/Recordkeeper: 44 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 870 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5189 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–CS

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720–CS, Carrier Summary Report.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at (202) 622–3933, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carrier Summary Report.

OMB Number: 1545–1733.

Form Number: 720–CS.

Abstract: Representatives of the motor fuel industry, State governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–CS is an information return that will be used by carriers to report their monthly deliveries and receipts of products to and from terminals.

Current Actions: There is a net increase of 7 line items to the form and schedules.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 39,900.

Estimated Time per Respondent: 5 hours, 15 minutes.

Estimated Total Annual Burden Hours: 209,418.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5178 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 44, U.S.C. 3506(c)(2)(A). Currently, the Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning the Native American CDFI Assistance (NACA) Application.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all comments to Ruth Jaure, CDFI/NACA Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The NACA Application may be obtained from the Native Initiatives page of the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Ruth Jaure, CDFI/NACA Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–9156. Please note this is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Native American CDFI Assistance (NACA) Program Application.

OMB Number: 1559–0025.

Abstract: Through NACA, the CDFI Fund provides Financial Assistance (FA) awards to Native CDFIs whose Comprehensive Business Plans demonstrate community development impact. Impact is measured through the deployment of credit, capital, and financial services to the applicant's Target Markets or an expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations.

The CDFI Fund also provides Technical Assistance (TA) grants to certified CDFIs, Sponsoring Entities (such as Tribal governments), and other organizations proposing to become Native CDFIs in order to build their capacity to better address the community development and capital access needs of their existing or proposed Target Markets and/or to become certified CDFIs. The regulations governing the CDFI Program are found at 12 CFR part 1805 and provide guidance on evaluation criteria and other requirements of NACA.

The questions that the application contains, and the information generated thereby, will enable the CDFI Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for a NACA award. Failure to collect this information could result in improper uses of Federal funds.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular Review.

Affected Public: Certified NACA CDFIs and entities seeking NACA CDFI Certification.

Estimated Number of Respondents: 100

Estimated Annual Time per Respondent: 100 hours

Estimated Total Annual Burden Hours: 10,000 hours

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund website at *http://www.cdfifund.gov. Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The CDFI Fund specifically requests comments concerning the following: (1) Whether offering separate applications for the FA and TA components would reduce the burden on applicants; (2) if an applicant eligibility screen should be applied before the application deadline, allowing applicants to determine beforehand if they would be qualified to receive an award; (3) if detailed Matching Funds documentation should be collected later in the application review process, and if the Matching Funds documentation is to be collected, what is a reasonable amount of time to expect an applicant to provide this data; (4) the merit of reducing the narrative page limits in the application; (5) the potential burden of requiring specific documents to support proposed uses of TA funds, namely Statements of Work for professional services, and resumes and/or position descriptions for personnel; and (6) the potential burden of requiring additional documentation to support the application, namely tax returns (Form 990), Certificates of Good Standing, operating budgets, lists of sources of capital, rate sheets for products and services, and borrower characteristic profiles.

Authority: 12 CFR part 1805.

Dated: March 3, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010–5158 Filed 3–10–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107186–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107186–00 (TD 9114), Electronic Payee Statements (§§ 1.6041–2, 1.6050S–2, 1.6050S–4, and 31.6051–1).

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Payee Statements.

OMB Number: 1545–1729.

Regulation Project Number: REG–107186–00.

Abstract: In general, under these regulations, a person required to furnish a statement on Form W–2 under Code sections 6041(d) or 6051, or Forms 1098–T or 1098–E under Code section 6050S, may furnish these statements electronically if the recipient consents to receive them electronically, and if the person furnishing the statement (1) makes certain disclosures to the recipient, (2) annually notifies the recipient that the statement is available on a Web site, and (3) provides access to the statement on that Web site for a prescribed period of time.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individual or households.

Estimated Number of Responses/Recordkeepers: 28,449,495.

Estimated Average Annual Burden per Response/Recordkeeper: 6 minutes.

Estimated Total Annual Reporting/Recording Hours: 2,844,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5190 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8806

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8806, Information Return for Acquisition of Control or Substantial Change in Capital Structure.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Acquisition of Control or Substantial Change in Capital Structure.

OMB Number: 1545–1869.

Form Number: 8806.

Abstract: Form 8806 is used to report information regarding transactions involving acquisition of control or substantial change in capital structure under section 6043.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 11 hours, 18 minutes.

Estimated Total Annual Burden Hours: 113.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5191 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8328

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, at (202) 622–3933, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

OMB Number: 1545–0874.

Form Number: Form 8328.

Abstract: Internal Revenue Code section 4146(f) requires that an annual volume limit be placed on the amount of private activity bonds issued by each State. Code section 146(f)(3) provides that the unused amount of the private activity bonds for specific programs can be carried forward for 3 years depending on the type of project. In order to carry forward the unused amount of the private activity bond, an irrevocable election can be made by the issuing authority. Form 8328 allows the issuer to execute the carryforward election.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 13 hours, 13 minutes.

Estimated Total Annual Burden Hours: 132,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5192 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8875

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8875, Taxable REIT Subsidiary Election.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxable REIT Subsidiary Election.

OMB Number: 1545–1721.

Form Number: 8875.

Abstract: A corporation and a REIT use Form 8875 to jointly elect to have the corporation treated as a taxable REIT subsidiary as provided in section 856(l).

Current Actions: There are no changes being made to the form at this time.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 7 hr., 40 min.

Estimated Total Annual Burden Hours: 7,660.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records

relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5194 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–114998–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–114998–99 (TD 8941), Obligations of States and Political Subdivisions (§ 1.142(f)(4)–1).

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Obligations of States and Political Subdivisions.

OMB Number: 1545–1730.

Regulation Project Number: REG–114998–99.

Abstract: Section 421(f)(4) of the Internal Revenue Code of 1986 permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8), and that expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as tax-exempt bonds. The final regulations (1.142(f)–1) set forth the required time and manner of making this statutory election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations, and State, local or Tribal governments.

Estimated Number of Respondents: 15.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 15.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5196 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720–TO

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720–TO, Terminal Operator Report.

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Terminal Operator Report.

OMB Number: 1545–1734.

Form Number: 720–TO.

Abstract: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effect has resulted in a system to track the movement of all products to and from terminals. Form 720–TO is an information return that will be used by terminal operators to report their monthly receipts and disbursements of products.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 504,000.

Estimated Time per Respondent: 4 hrs, 40 minutes.

Estimated Total Annual Burden Hours: 2,347,020.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–5188 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Determination Agreement (for Use by Employers in the Food and Beverage industry)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Rate Determination Agreement (for use by employers in the food and beverage industry).

DATES: Written comments should be received on or before May 10, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joe Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: For Tip Rate Determination Agreement (for Use by Employers in the Food and Beverage Industry).

OMB Number: 1545–1715.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 1,737.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 5, 2010.

R. Joe Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–5193 Filed 3–10–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on April 22–23, 2010, in Room 630, Department of Veterans Affairs, 810

Vermont Avenue, NW., Washington, DC. On April 22, the session will begin at 8:30 a.m. and end at 5 p.m. On April 23, the session will begin at 8 a.m. and end at 12 noon. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, update on VA's geriatric workforce (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of the VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee not less than 10 days in advance of the meeting to Mrs. Marcia Holt-Delaney, Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney, Program Analyst, at (202) 461–6769 or e-mail at *Marcia.Holt-Delaney@va.gov*.

Dated: March 5, 2010.

By Direction of the Secretary:

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–5166 Filed 3–10–10; 8:45 am]

BILLING CODE P

Federal Register

Thursday,
March 11, 2010

Part II

Department of the Treasury
Office of the Comptroller of the Currency
Federal Reserve System
Federal Deposit Insurance Corporation
Department of the Treasury
Office of Thrift Supervision

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2010–0002]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1349]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN—3064–AC97

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2010–0004]

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Notice.

SUMMARY: The OCC, Board, FDIC, and OTS (the agencies) are adopting as final the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) that were proposed on January 6, 2009. In response to comments received, the agencies made minor clarifications to the new and revised questions and answers that were proposed.

DATES: *Effective Date:* March 11, 2010.

FOR FURTHER INFORMATION CONTACT:

OCC: Gregory Nagel or Karen Tucker, National Bank Examiners, Compliance Policy Division, (202) 874–4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cathy Gates, Senior Project Manager, (202) 452–3946; or Brent Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Janet R. Gordon, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898–3850; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stephanie M. Caputo, Senior Compliance Program Analyst, Compliance and Consumer Protection, (202) 906–6549; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OCC, Board, FDIC, and OTS implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 228, 345, and 563e. The agencies' regulations are interpreted primarily through the "Interagency Questions and Answers Regarding Community Reinvestment" (Questions and Answers), which provide guidance for use by agency personnel, financial institutions, and the public. The Questions and Answers were first published under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647), and were last revised on January 6, 2009 (2009 Questions and Answers) (74 FR 498).

The **SUPPLEMENTARY INFORMATION** published with the 2009 Questions and Answers also proposed for comment one new question and answer (Q&A) and two revised Q&As. 74 FR 504–06. Together, the agencies received comments from 19 different parties. The commenters represented financial institutions and their trade associations, community development advocates and organizations, and others.

As discussed below, this document adopts the three new and revised Q&As that were proposed in January 2009, with minor clarifications, as appropriate, in response to comments received. The agencies are also adopting conforming revisions to an existing Q&A.

The Interagency Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for state nonmember banks, they appear at 12 CFR 345.26; and for thrifts, the small savings association performance standards appear at 12 CFR 563e.26. Accordingly, the citation would be to 12 CFR ____.26. Each Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR ____.26 would be identified as § ____.26—1.

Although a particular Q&A may provide guidance on one regulatory provision, *e.g.,* 12 CFR ____.22, which relates to the lending test applicable to large institutions, its content may also be applicable to, for example, small institutions, which are evaluated pursuant to small institution performance standards found at 12 CFR ____.26. Thus, readers with a particular interest in small institution issues, for example, should also consult the guidance that describes the lending, investment, and service tests.

The Questions and Answers are indexed to aid readers in locating specific information in the document. The index contains keywords, listed alphabetically, along with numerical indicators of questions and answers that relate to that keyword. The list of Q&As addressing each keyword in the index is not intended to be exhaustive.

New and Revised Q&As

New Q&A: Community Services Targeted to Low- or Moderate-Income Individuals

The agencies proposed a new Q&A, § ____.12(g)(2)—1, that would provide examples of ways an institution that provides community services could determine that the community services are targeted to low- and moderate-income individuals when the institution does not know the actual income of the individuals. Several comments were received from community groups and banking organizations that supported the examples in the proposal. In addition, one suggestion was made to clarify that community services can include those provided by an entity with a broad mission, provided that the activities themselves qualify as community services. This suggestion was incorporated into the Q&A examples as a new fourth bullet.

Another commenter suggested that the definition of community services be broadened to cover financial literacy programs provided to school children of any income level in any school. Financial literacy programs are an example of community development services. *See* Q&A § ____.12(i)—3. The commenter's suggestion was not adopted because community development services must have a primary purpose of community development, which would require the financial literacy programs to be targeted to low- or moderate-income individuals.

The new Q&A is being adopted as revised.

Revised Q&A § ____.12(h)—8: Primary Purpose of Community Development

The regulations require community development activities to have a "primary purpose of community development." *See* 12 CFR ____.12(h), ____.12(i), and ____.12(t). Q&A § ____.12(h)—8 historically has provided two methods of determining whether an activity has a primary purpose of community development: (1) If a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then an activity will be considered to possess the requisite primary purpose; and (2) if the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved, then the requisite primary purpose may be found.

To date, the agencies have generally indicated that if an activity has a primary purpose of community development (determined by either method above), the entire investment, loan, or service would be considered in an institution's CRA evaluation. However, if an activity does not have a primary purpose of community development applying these standards, then it would not be considered as a qualified investment, community development loan, or community development service.

The agencies proposed to revise Q&A § ____.12(h)—8 to allow pro rata consideration for an activity that provides some affordable housing targeted to low- or moderate-income individuals, but when it would not be deemed to have a primary purpose of community development measured by a majority of the entire activity's beneficiaries or dollar value, or by relying on the express purpose of the activity. The proposed Q&A would specifically allow activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, to be eligible for consideration as an activity that has a "primary purpose" of community development at the election of the institution. In those cases, the proposed Q&A would allow an institution to receive pro rata consideration for the portion of the activity that provides affordable housing to low- or moderate-income individuals.

Commenters generally supported the proposed revision. One commenter suggested that the agencies should allow only pro rata treatment in all situations where less than a majority of an activity's dollars will be used for community development. This commenter further suggested that the agencies should eliminate full consideration of activities that have an "express, bona fide intent" of community development when the measurable portion of any benefit bestowed or dollars applied is less than a majority of the entire activity's benefits or dollar value. The agencies decline to adopt this suggestion. If the express, bona fide intent of an activity is community development, even though the measurable portion of any benefit bestowed or dollars applied is less than a majority of the entire activity's benefits or dollar value, the agencies continue to believe that it is important that such activities, such as projects involving low-income housing tax credits, receive full consideration.

Several commenters were concerned that the proposal would result in a reduction of the amount of CRA consideration provided to financial institutions' loans or investments in mixed-income properties. The agencies do not intend this result. In fact, the proposed revision should increase the amount of consideration available to institutions. Some commenters believed that all activities in connection with properties with a set-aside for affordable units received total quantitative CRA consideration. Although this is true if the express, bona fide intent of the entire project is community development, that is not always the intent. For example, a private development in which a developer is required to set aside a small percentage of the units as affordable housing in order to receive zoning approval would not have the requisite express, bona fide intent. As a result of the revision, however, the financial institution could receive consideration for the pro rata amount of the affordable housing set-aside.

The agencies had asked whether allowing pro rata consideration would spur the construction and rehabilitation of housing for low- or moderate-income persons. Commenters provided mixed responses. A number of commenters believed that allowing pro rata consideration may provide an added incentive to financial institutions. A couple of commenters, however, believed that the revision would not spur additional construction and rehabilitation because, for example, the development of local housing is based on a local agency's determination of its community housing needs and is not influenced by a financial institution's CRA requirements.

Commenters responded nearly unanimously that the pro rata treatment should not be restricted only to instances where a governmental entity requires a set-aside. Commenters believed that the voluntary inclusion of affordable housing components in development by private developers should also receive consideration. As one commenter stated, "Affordable housing is affordable housing." The final question and answer would allow pro rata treatment in connection with any project that provides affordable housing, regardless of whether a governmental entity requires a set-aside.

In response to the agencies' question about how the amount of the pro rata share should be determined for reporting purposes (by units or by loan proceeds), several commenters urged flexibility. Several commenters believed that the entire amount of the loan should be reported. Other commenters suggested that when the actual amount of funds attributed to the affordable units is readily apparent, for example in connection with a construction loan, the actual dollar amount should be considered. However, in other cases, where the actual amount of funds is not readily apparent, the pro rata share should be determined based on the percentage of set-aside units.

The final question and answer has been clarified. Institutions will determine the pro rata share of the activity that provides affordable housing to low- or moderate-income individuals based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals. The Agencies believe that this method of determining the portion of a loan or investment that provides affordable housing for low- or moderate-income individuals imposes the least amount of burden on developers and lenders to differentiate the construction costs, including the proportional share of costs related to infrastructure, common areas, and site amenities, between market and affordable units.

The proposed revision restricted the pro rata treatment only to affordable housing activities by financial

institutions. The agencies asked whether the pro rata treatment should apply only to affordable housing or whether the pro rata treatment should also apply to loans or investments with other community development purposes.

Since the CRA regulations were revised in 1995, affordable housing initiatives have included more and more mixed-income housing. Fewer new or rehabilitated housing projects provide primarily low-income housing. Mixed-income housing is an important goal in government housing assistance programs. Because of the compelling public interest in affordable housing programs, the agencies believe that it is appropriate that the pro rata treatment be adopted with regard to affordable housing. However, the agencies decline to expand the coverage of this treatment to activities other than those providing affordable housing at this time. The agencies will keep abreast of developments in other types of community development activities and evaluate the effectiveness of the pro rata treatment in connection with affordable housing programs. We will reassess whether such treatment should be afforded other types of community development activities at a later date. The agencies have added clarifying language to the final answer to emphasize that the pro rata treatment applies only to affordable housing activities.

Finally, the agencies asked for comment on whether the adoption of pro rata treatment would lead to unjustifiable inflation of community development activities. Commenters unanimously asserted that it would not.

The agencies are adopting the revised Q&A with the clarifications described above.

Revised Q&A § ____.42(b)(2)—3: Data Collection

The agencies explained in January 2009 that if the proposed revision to Q&A § ____.12(h)—8, described above, were adopted, the agencies would also revise Q&A § ____.42(b)(2)—3 to address data collection and reporting of the pro rata share of the mixed-income housing loans described in the Q&A. The agencies proposed that, if an institution were to elect to have the portion of mixed-income housing loans that were set aside for low- or moderate-income housing considered as community development loans, in order to receive consideration for such loans, the institution would need to collect and report data on only the portions of the loans that provide housing that is affordable for low- or moderate-income individuals.

Three commenters addressed the proposed revision to this Q&A. The general concern addressed by the commenters was the potential for confusion in reporting the pro rata share of an affordable housing activity. As in the past, the full amount of the loan should be collected and reported if the majority of the dollars or beneficiaries are identifiable to a community development purpose. Similarly, the full amount of the loan should be collected and reported if the express, bona fide intent of the loan or investment is community development, even though a majority of the dollars or beneficiaries are not identifiable with a community development purpose. In connection with affordable housing projects that provide mixed-income housing, but where a majority of the dollars or units do not have a community development purpose and the express, bona fide intent of the loan is not community development, the institution must report only the pro rata dollar amount of the portion of the loan that provides affordable housing to low- or moderate-income individuals. The pro rata dollar amount of the total activity will be based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals. The agencies are adopting the proposed revision to the Q&A, but have added a sentence to the final answer to clarify this guidance.

Conforming Revision to Q&A § ____.22(a)(2)—4: Other Loan Data

Q&A § ____.22(a)(2)—4, as adopted in January of 2009 (74 FR 517), stated that loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing, should be submitted by the financial institution for consideration as "other loan data." In the supplementary information published with the proposed revisions to the interagency questions and answers, the agencies advised that, if the proposed revision to Q&A § ____.12(h)—8 were adopted, a conforming change to Q&A § ____.22(a)(2)—4 would be made. The answer to Q&A § ____.22(a)(2)—4 has been revised to remove the reference to "loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing" as an example of "other loan data" because such activities are eligible for pro rata treatment.

The text of the final Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Community Reinvestment

§ ____.11—Authority, purposes, and scope

§ ____.11(c) Scope

§§ ____.11(c)(3) & 563e.11(c)(2) Certain special purpose institutions

§§ ____.11(c)(3) & 563e.11(c)(2)—1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§§ ____.11(c)(3) & 563e.11(c)(2)—2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association, or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

§ ____.12(a)—1: *Does the definition of "affiliate" include subsidiaries of an institution?*

A1. Yes, "affiliate" includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§ ____.12(f) Branch

§ ____.12(f)—1: *Do the definitions of "branch," "automated teller machine (ATM)," and "remote service facility*

(RSF)" include mobile branches, ATMs, and RSFs?

A1. Yes. Staffed mobile offices that are authorized as branches are considered "branches," and mobile ATMs and RSFs are considered "ATMs" and "RSFs."

§ ____.12(f)—2: *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not "branches" unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

§ ____.12(g) Community development

§ ____.12(g)—1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of "community development" includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies.

§ ____.12(g)—2: *Must a community development activity occur inside a low- or moderate-income area, designated disaster area, or underserved or distressed nonmetropolitan middle-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities, regardless of their location, that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§ ____.12(g)—3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary" purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development. See also Q&A § ____.12(h)—8 for more information on "primary purpose."

§ ____.12(g)—4: *The CRA provides that, in assessing the CRA performance of non-minority- and non-women-owned (majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLIs), provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Must such activities also benefit the majority-owned financial institution's assessment area?*

A4. No. Although the regulations generally provide that an institution's CRA activities will be evaluated for the extent to which they benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s), the agencies apply a broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with MWLIs, as provided by the CRA. Thus, such activities will be favorably considered in the CRA performance evaluation of the institution (as loans, investments, or services, as appropriate), even if the MWLIs are not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the MWLIs are chartered. The impact of a majority-owned institution's activities in cooperation with MWLIs on the majority-owned institution's CRA rating will be determined in conjunction with its overall performance in its assessment area(s).

Examples of activities undertaken by a majority-owned financial institution in cooperation with MWLIs that would receive CRA consideration may include:

- Making a deposit or capital investment;
- Purchasing a participation in a loan;
- Loaning an officer or providing other technical expertise to assist an MWLI in improving its lending policies and practices;
- Providing financial support to enable an MWLI to partner with schools or universities to offer financial literacy education to members of its local community; or
- Providing free or discounted data processing systems, or office facilities to aid an MWLI in serving its customers.

§ ____.12(g)(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals

§ ____.12(g)(1)—1: *When determining whether a project is "affordable housing for low- or moderate-income individuals," thereby meeting the definition of "community development," will it be sufficient to use a formula that relates the cost of ownership, rental, or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of "affordable housing" for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will

review factors such as demographic, economic, and market data to determine the likelihood that the housing will "primarily" accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.

§ ____.12(g)(2) Community services targeted to low- or moderate-income individuals

§ ____.12(g)(2)—1: *Community development includes community services targeted to low- or moderate-income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?*

A1: Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include:

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (*see, e.g., http://www.bls.gov/bls/blswage.htm* (Bureau of Labor Statistics)).

§ ____.12(g)(3) Activities that promote economic development by financing businesses or farms that meet certain size eligibility standards

§ ____.12(g)(3)—1: "*Community development*" *includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. The concept of "community development" under 12 CFR ____.12(g)(3) involves both a "size" test and a "purpose" test. An institution's loan, investment, or service meets the "size" test if it finances, either directly or through an intermediary, entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less.

To meet the "purpose test," the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments. The agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development. (But also refer to Q&As § ____.42(b)(2)—2, § ____.12(h)—2, and § ____.12(h)—3 for more information about which loans may be considered community development loans.)

In addition to their quantitative assessment of the amount of a financial institution's community development activities, examiners must make qualitative assessments of an institution's leadership in community development matters and the complexity, responsiveness, and impact of the community development activities of the institution. In reaching a conclusion about the impact of an institution's community development activities, examiners may, for example, determine that a loan to a small business in a low- or moderate-income geography that provides needed jobs and services in that area may have a greater impact and be more responsive to the community credit needs than does a loan to a small business in the same geography that does not directly provide additional jobs or services to the community.

§ ____.12(g)(4) Activities that revitalize or stabilize certain geographies

§ ____.12(g)(4)—1: *Is the revised definition of community development, effective September 1, 2005 (under the OCC, Board, and FDIC rules) and effective April 12, 2006 (under OTS's rule), applicable to all institutions or only to intermediate small institutions?*

A1. The revised definition of community development is applicable to all institutions. Examiners will not use the revised definition to qualify activities that were funded or provided prior to September 1, 2005 (under the OCC, Board, and FDIC rules) or prior to April 12, 2006 (under OTS's rule).

§ ____.12(g)(4)—2: *Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster areas?*

A2. An activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely to develop middle- or upper-income housing in a community in need of low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. (Except in connection with intermediate small institutions, a housing-related loan is not evaluated as a "community development loan" if it has been reported or collected by the institution or its affiliate as a home mortgage loan,

unless it is a multifamily dwelling loan. *See* 12 CFR ____.12(h)(2)(i) and Q&As § ____.12(h)—2 and § ____.12(h)—3.) An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. *See* Q&As § ____.12(g)(4)(i)—1 and § ____.12(h)—5.

In *underserved* nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such underserved areas if the activities also provide housing for low- or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an underserved nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low- or moderate-income individuals.

§ ____.12(g)(4)(i) Activities that revitalize or stabilize low- or moderate-income geographies

§ ____.12(g)(4)(i)—1: What activities are considered to "revitalize or stabilize" a low- or moderate-income geography, and how are those activities considered?

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract new, or retain existing, businesses or residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. § 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography. For example, foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners in low- or moderate-income geographies, consistent with safe and sound banking practices, may help to revitalize or stabilize those geographies.

To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize or stabilize a low- or moderate-income geography, see Q&As § ____.12(g)—2 and § ____.12(h)—5.

§ ____.12(g)(4)(ii) Activities that revitalize or stabilize designated disaster areas

§ ____.12(g)(4)(ii)—1: *What is a "designated disaster area" and how long does it last?*

A1. A "designated disaster area" is a major disaster area designated by the federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (*http://www.fema.gov*), but excludes counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

§ ____.12(g)(4)(ii)—2: *What activities are considered to "revitalize or stabilize" a designated disaster area, and how are those activities considered?*

A2. The Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (*see, e.g.,* Q&As § ____.12(i)—3; § ____.12(t)—4; § ____.22(b)(2) & (3)—4; § ____.22(b)(2) & (3)—5; and § ____.24(d)(3)—1).

§ ____.12(g)(4)(iii) Activities that revitalize or stabilize distressed or underserved nonmetropolitan middle-income geographies

§ ____.12(g)(4)(iii)—1: *What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?*

A1. Eligible nonmetropolitan middle-income geographies are those designated by the Agencies as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in 12 CFR ____.12(k), a geography is a census tract delineated by the United States Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The Agencies will use as the basis for these designations the "urban influence codes," numbered "7," "10," "11," and "12," maintained by the Economic Research Service of the United States Department of Agriculture.

The Agencies publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions

Examination Council Web site (*http://www.ffiec.gov*).

§ ____.12(g)(4)(iii)—2: *How often will the Agencies update the list of designated distressed and underserved nonmetropolitan middle-income geographies?*

A2. The Agencies will review and update the list annually. The list is published on the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov*).

To the extent that changes to the designated census tracts occur, the Agencies have determined to adopt a one-year "lag period." This lag period will be in effect for the twelve months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

§ ____.12(g)(4)(iii)—3: *What activities are considered to "revitalize or stabilize" a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?*

A3. An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract new, or retain existing, businesses or residents. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. *See* Q&As § ____.12(g)(4)(i)—1 and § ____.12(h)—5.

§ ____.12(g)(4)(iii)—4: *What activities are considered to "revitalize or stabilize" an underserved nonmetropolitan middle-income geography, and how are those activities evaluated*?

A4. The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low- or moderate-income individuals. Activities such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low- or moderate-income individuals, would be a new or expanded hospital that serves the entire county, including low- and moderate-income residents; an industrial park for businesses whose employees include low- or moderate-income individuals; a new or rehabilitated sewer line that serves community residents, including low- or moderate-income residents; a mixed-income housing development that includes affordable housing for low- and moderate-income families; or a renovated elementary school that serves children from the community, including children from low- and moderate-income families.

Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle- or upper-income housing development while bypassing a low- or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As § ____.12(g)(4)(ii)—2 and § ____.12(g)(4)(iii)—3.

§ ____.12(h) Community development loan

§ ____.12(h)—1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development;
- Local, state, and tribal governments for community development activities;
- Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located; and
- Businesses, in an amount greater than $1 million, when made as part of the Small Business Administration's 504 Certified Development Company program.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, that are present in the housing, facilities, or site.

§ ____.12(h)—2: *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under the CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been

a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans, unless the small institution is an intermediate small institution (*see* § ____.12(h)—3). Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* Q&A § ____.42(b)(2)—2.

§ ____.12(h)—3: *May an intermediate small institution that is not subject to HMDA reporting have home mortgage loans considered as community development loans? Similarly, may an intermediate small institution have small business and small farm loans and consumer loans considered as community development loans?*

A3. Yes. In instances where intermediate small institutions are not required to report HMDA or small business or small farm loans, these loans may be considered, at the institution's option, as community development loans, provided they meet the regulatory definition of "community development." If small business or small farm loan data have been reported to the agencies to preserve the option to be evaluated as a large institution, but the institution ultimately chooses to be evaluated under the intermediate small institution examination standards, then the institution would continue to have the option to have such loans considered as community development loans. However, if the institution opts to be evaluated under the lending, investment, and service tests applicable to large institutions, it may not choose to have home mortgage, small business, small farm, or consumer loans considered as community development loans.

Loans other than multifamily dwelling loans may not be considered under both the lending test and the community development test for intermediate small institutions. Thus, if an institution elects to have certain loans considered under the community development test, those loans may not also be considered under the lending test, and would be excluded from the lending test analysis.

Intermediate small institutions may choose individual loans within their portfolio for community development consideration. Examiners will evaluate an intermediate small institution's community development activities within the context of the responsiveness of the activity to the community development needs of the institution's assessment area.

§ ____.12(h)—4: *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A4. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of "community development."

§ ____.12(h)—5: *The regulation indicates that community development includes "activities that revitalize or stabilize low- or moderate-income geographies." Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A5. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a low- or moderate-income area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a low- or moderate-income area (or a nearby area) that employs or serves residents of the area and, thus, stabilizes the area, may be considered to have a community development purpose. For example, in a low-income area, a loan for a pharmacy that employs and serves residents of the area promotes community development.

§ ____.12(h)—6: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution that, considering its performance context, has adequately addressed the community development needs of its assessment area(s) will receive consideration for certain other community development activities. These community development activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s).

§ ____.12(h)—7: *What is meant by the term "regional area"?*

A7. A "regional area" may be as large as a multistate area. For example, the "mid-Atlantic states" may comprise a regional area.

Community development loans and services and qualified investments to statewide or regional organizations that have a bona fide purpose, mandate, or function that includes serving the geographies or individuals within the institution's assessment area(s) will be considered as addressing assessment area needs. When examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs.

In addition, as long as an institution has adequately addressed the community development needs of its assessment area(s), it will also receive consideration for community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s), even if those activities do not benefit its assessment area(s).

§ ____.12(h)—8: *What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a*

qualified investment, or a community development service?

A8. A loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in 12 CFR ____.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose, and the institution may receive CRA consideration for the entire activity, if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

Generally, a loan, investment, or service will be determined to have a "primary purpose" of community development only if it meets the criteria described above. However, an activity involving the provision of affordable housing also may be deemed to have a "primary purpose" of community development in certain other limited circumstances in which these criteria have not been met. Specifically, activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, also would be eligible for consideration as an activity that has a "primary purpose" of community development at the election of the institution. In such cases, an institution may receive pro rata consideration for the portion of such activities that helps to provide affordable housing to low- or moderate-income individuals. For example, if an institution makes a $10 million loan to finance a mixed-income housing development in which ten percent of the units will be set aside as affordable housing for low- and moderate-income individuals, the institution may elect to treat $1 million of such loan as a community development loan. In other words, the pro rata dollar amount of the total activity will be based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals.

The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities should be prepared to demonstrate the activities' qualifications.

§ ____.12(i) Community development service

§ ____.12(i)—1: *In addition to meeting the definition of "community development" in the regulation, community development services must also be related to the provision of financial services. What is meant by "provision of financial services"?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§ ____.12(i)—2: *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§ ____.12(i)—3: *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing financial services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income areas, unless the provision of such services has been considered in the evaluation of an institution's retail banking services under 12 CFR ____.24(d);
- Increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize a low- or moderate-income geography, a designated disaster area, or a distressed or underserved nonmetropolitan middle-income geography, unless the opening or maintaining of such branches or other facilities has been considered in the evaluation of the institution's retail banking services under 12 CFR ____.24(d);
- Providing technical assistance on financial matters to nonprofit, tribal, or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing, including credit counseling to assist low- or moderate-income borrowers in avoiding foreclosure on their homes;

• Establishing school savings programs or developing or teaching financial education or literacy curricula for low- or moderate-income individuals;

• Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals;

• Providing international remittance services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittance services in connection with a low-cost account);

• Providing other financial services with the primary purpose of community development, such as low-cost savings or checking accounts, including "Electronic Transfer Accounts" provided pursuant to the Debt Collection Improvement Act of 1996, individual development accounts (IDAs), or free or low-cost government, payroll, or other check cashing services, that increase access to financial services for low- or moderate-income individuals; and

• Providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings.

Examples of technical assistance activities that might be provided to community development organizations include:

• Serving on a loan review committee;

• Developing loan application and underwriting standards;

• Developing loan processing systems;

• Developing secondary market vehicles or programs;

• Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;

• Furnishing financial services training for staff and management;

• Contributing accounting/bookkeeping services; and

• Assisting in fund raising, including soliciting or arranging investments.

§ ____.12(j) Consumer loan

§ ____.12(j)—1: *Are home equity loans considered "consumer loans"?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§ ____.12(j)—2: *May a home equity line of credit be considered a "consumer loan" even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a "consumer loan" if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be "double counting" because part of the line may also have been reported under HMDA.

§ ____.12(j)—3: *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ ____.12(l) Home mortgage loan

§ ____.12(l)—1: *Does the term "home mortgage loan" include loans other than "home purchase loans"?*

A1. Yes. "Home mortgage loan" includes "home improvement loan," "home purchase loan," and "refinancing," as defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans, and loans for the purchase of manufactured homes. *See also* Q&A § ____.22(a)(2)—7.

§ ____.12(l)—2: *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as "other loan data." Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider these other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ ____.12(m) Income level

§ ____.12(m)—1: *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for *geographies,* i.e., census tracts, are derived from Census Bureau information and are updated approximately every ten years. The income levels for *individuals* are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually.

Institutions may obtain 2000 geography income information and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by accessing the Federal Financial Institution Examination Council's (FFIEC's) Web

site at *http://www.ffiec.gov/cra* or by calling the FFIEC's CRA Assistance Line at (202) 872–7584.

§ ____.12(n) Limited purpose institution

§ ____.12(n)—1: *What constitutes a "narrow product line" in the definition of "limited purpose institution"?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§ ____.12(n)—2: *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental *and* done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the retail lending provided as an incident to the institution's wholesale lending?
- Are the retail loans provided as an accommodation to the institution's wholesale customers?
- Are the other types of loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§ ____.12(n)—3: *Do "niche institutions" qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) ("niche institutions") generally would not qualify as limited purpose (or wholesale) institutions.

§ ____.12(t) Qualified investment

§ ____.12(t)—1: *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§ ____.12(t)—2: *Are mortgage-backed securities or municipal bonds "qualified investments"?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Certain municipal bonds in underserved nonmetropolitan middle-income geographies may also be qualified investments. *See* Q&A § ____.12(g)(4)(iii)—4. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs of low- or moderate-income individuals in order to qualify. *See also* Q&A § ____.23(b)—2.

§ ____.12(t)—3: *Are Federal Home Loan Bank stocks or unpaid dividends and membership reserves with the Federal Reserve Banks "qualified investments"?*

A3. No. Federal Home Loan Bank (FHLB) stocks or unpaid dividends, and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration as a community development service for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* Q&A § ____.12(i)—3.

§ ____.12(t)—4: *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits, or shares in or to:

- Financial intermediaries (including Community Development Financial Institutions (CDFIs), New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs), specialized SBICs, and Rural Business Investment Companies (RBICs) that promote economic development by financing small businesses;
- Community development venture capital companies that promote economic development by financing small businesses;
- Facilities that promote community development by providing community services for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial literacy programs; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable low- or moderate-income individuals to work.

See also Q&As § ____.12(g)(4)(ii)—2; § ____.12(g)(4)(iii)—3; § ____.12(g)(4)(iii)—4.

§ ____.12(t)—5: *Will an institution receive consideration for charitable*

contributions as "*qualified investments*"*?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term "grant." A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§ ____.12(t)—6: *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or* "*bought down*" *the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the responsiveness, innovativeness, and complexity of the community development loan within the bounds of safe and sound banking practices.

§ ____.12(t)—7: *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution as a community development service if the activity meets the regulatory definition of "community development service."

§ ____.12(t)—8: *When evaluating a qualified investment, what consideration will be given for prior-period investments?*

A8. When evaluating an institution's qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weighting given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

§ ____.12(u) Small institution

§ ____.12(u)—1: *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A1. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has assets less than the asset threshold delineated in 12 CFR ____.12(u)(1) for small institutions.

§ ____.12(u)(2) Small institution adjustment

§ ____.12(u)(2)—1: *How often will the asset size thresholds for small institutions and intermediate small institutions be changed, and how will these adjustments be communicated?*

A1. The asset size thresholds for "small institutions" and "intermediate small institutions" will be adjusted annually based on changes to the Consumer Price Index. More specifically, the dollar thresholds will be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each twelve-month period ending in November, with rounding to the nearest million. Any changes in the asset size thresholds will be published in the **Federal Register.** Historical and current asset-size threshold information may be found on the FFIEC's Web site at *http://www.ffiec.gov/cra.*

§ ____.12(v) Small business loan

§ ____.12(v)—1: *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of "loan to small business" in the instructions in the "Consolidated Reports of Conditions and Income" (Call Report) and "Thrift Financial Report" (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition of "community development."

§ ____.12(v)—2: *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by "nonfarm nonresidential properties," as defined in the Call Report and TFR, in amounts of $1 million or less.

§ ____.12(v)—3: *Are loans secured by nonfarm residential real estate to finance small businesses* "*small business loans*"*?*

A3. *Applicable to banks filing Call Reports:* Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as "small business" loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See* Call Report Glossary definition of "Loan Secured by Real Estate.") The agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business." *See also* Q&A § ____.22(a)(2)—7.

Applicable to institutions that file TFRs: Possibly, depending how the loan is classified for TFR purposes. Loans secured by nonfarm residential real estate to finance small businesses may be included as small business loans only if they are reported on the TFR as nonmortgage, commercial loans. (*See* TFR Q&A No. 62.) Otherwise, loans that meet the definition of mortgage loans, for TFR reporting purposes, may be classified as mortgage loans.

§ ____.12(v)—4: *Are credit cards issued to small businesses considered* "*small business loans*"*?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

§ ____.12(x) Wholesale institution

§ ____.12(x)—1: *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations, including off-balance sheet activities.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A § ____.12(n)—2.

§ ____.21—Performance tests, standards, and ratings, in general

§ ____.21(a) Performance tests and standards

§ ____.21(a)—1: *How will examiners apply the performance criteria?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.21(a)—2: *Are all community development activities weighted equally by examiners?*

A2. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity, if applicable, of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance. ("Innovativeness" and "complexity" are not factors in the community development test applicable to intermediate small institutions.)

§ ____.21(b) Performance context

§ ____.21(b)—1: *What is the performance context?*

A1. The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with some of this information. The performance context is not a formal assessment of community credit needs.

§ ____.21(b)(2) Information maintained by the institution or obtained from community contacts

§ ____.21(b)(2)—1: *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a formal needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ ____.21(b)(2)—2: *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies may consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies may share community contact information.

§ ____.21(b)(4) Institutional capacity and constraints

§ ____.21(b)(4)—1: *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's past performance and the performance of similarly situated lenders

§ ____.21(b)(5)—1: *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of "needs to improve" in the past may receive a rating of "substantial noncompliance" if its performance has not improved.

§ ____.21(b)(5)—2: *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.22—Lending test

§ ____.22(a) Scope of test

§ ____.22(a)—1: *Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?*

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include:

- Providing loan programs that include a financial education

component about how to avoid lending activities that may be abusive or otherwise unsuitable;

• Establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (i.e., based on the borrower's ability to repay) and with reasonable terms;

• Offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products;

• Establishing loan programs with the objective of providing affordable, sustainable, long-term relief, for example, through loan refinancings, restructures, or modifications, to homeowners who are facing foreclosure on their primary residences.

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the small, intermediate small, or large institution's lending programs.

§ ____.22(a)(1) Types of loans considered

§ ____.22(a)(1)—1: *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ ____.22(a)(1)—2: *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects and has collected and maintained the data; an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan originations and purchases/other loan data

§ ____.22(a)(2)—1: *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution, regardless of examination type. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance, but will be evaluated separately from the loans.

§ ____.22(a)(2)—2: *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ ____.22(a)(2)—3: *May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECAs), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR part 203?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. A small, intermediate small, or large institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as "other loan data."

§ ____.22(a)(2)—4: *In addition to MECAs, what are other examples of "other loan data"?*

A4. Other loan data include, for example:

• Loans funded for sale to the secondary markets that an institution has not reported under HMDA;

• Unfunded loan commitments and letters of credit;

• Commercial and consumer leases;

• Loans secured by nonfarm residential real estate, not taken as an abundance of caution, that are used to finance small businesses or small farms and that are not reported as small business/small farm loans or reported under HMDA; and

• An increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line; or $500,000, in the case of a small farm line.

§ ____.22(a)(2)—5: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A5. Yes. For all examination types, examiners evaluate an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. Examiners do not take into account whether or not such loans are guaranteed.

§ ____.22(a)(2)—6: *Do institutions receive consideration for purchasing loan participations?*

A6. Yes. Examiners will consider the amount of loan participations purchased when evaluating an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans, regardless of examination type. As with other loan purchases, examiners will evaluate whether participations in loan purchased, which have been sold and purchased a number of times, artificially inflate CRA performance. *See, e.g.,* § ____.21(a)—1.

§ ____.22(a)(2)—7: *How are refinancings of small business loans, which are secured by a one-to-four family residence and that have been reported under HMDA as a refinancing, evaluated under CRA?*

A7. *For banks subject to the Call Report instructions:* A loan of $1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an abundance of caution and where the terms have not been made more favorable than they would have been in the absence of the lien. (See Call Report Glossary definition of "Loan Secured by Real Estate.") If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, but only through an abundance of caution, this loan is reported not only as a refinancing under HMDA, but also as a small business loan under CRA. (Note that small farm loans are similarly treated.)

It is not anticipated that "double-reported" loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution

reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the "double-reported" loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as a small business or small farm loan if the security interest is not taken merely as an abundance of caution. Any such loan may be provided to examiners as "other loan data" ("Other Secured Lines/Loans for Purposes of Small Business") for consideration during a CRA evaluation. *See* Q&A § ____.12(v)—3. The refinancings of such loans *would be* reported under HMDA.

For savings associations subject to the Thrift Financial Reporting instructions: A loan of $1 million or less with a business purpose secured by a one-to-four family residence is considered a small business loan for CRA purposes if it is reported as a small business loan for TFR purposes and was not reported on the TFR as a mortgage loan (TFR Instructions for Commercial Loans: Secured). If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, and was not reported for TFR purposes as a mortgage loan, this loan is reported not only as a refinancing for HMDA, but is also reported as a small business loan under the TFR and CRA. The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as small business or small farm if it was reported as a mortgage on the TFR report.

OTS does not anticipate that "double-reported" loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the "double-reported" loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence should be reported in accordance with Q&A § ____.12(v)—3. The refinancings of such loans *would be* reported under HMDA.

§ ____.22(b) Performance criteria

§ ____.22(b)(1) Lending activity

§ ____.22(b)(1)—1: *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic distribution and borrower characteristics

§ ____.22(b)(2) & (3)—1: *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test applicable to either large or small institutions?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels, and among borrowers of different income levels and businesses and farms of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§ ____.22(b)(2) & (3)—2: *Must an institution lend to all portions of its assessment area?*

A2. The term "assessment area" describes the geographic area within which the agencies assess how well an institution, regardless of examination type, has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract is within an institution's assessment area(s), the institution must lend to that census tract. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ ____.22(b)(2) & (3)—3: *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ ____.22(b)(2) & (3)—4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small and

intermediate small institutions being evaluated under their respective performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ ____.22(b)(2) & (3)—5: *Under the lending test applicable to small, intermediate small, or large institutions, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4) Community development lending

§ ____.22(b)(4)—1: *When evaluating an institution's record of community development lending under the lending test applicable to large institutions, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under 12 CFR ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the 12 CFR ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under 12 CFR ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(5) Innovative or flexible lending practices

§ ____.22(b)(5)—1: *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending under the lending test applicable to large institutions?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. For example:

- In connection with a community development loan program, an institution may establish a technical assistance program under which the institution, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, an institution may implement a program under which, in addition to providing financing, the institution also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ ____.22(c) Affiliate lending

§ ____.22(c)(1) In general

§ ____.22(c)(1)—1: *If an institution, regardless of examination type, elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card

loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on affiliate lending

§ ____.22(c)(2)(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase

§ ____.22(c)(2)(i)—1: *Regardless of examination type, how is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes. For example, assume that two institutions are affiliated. Bank A originates a loan and claims it as a loan origination. Bank B later purchases the loan. Bank B may count the loan as a purchased loan.

The same institution may not count both the origination and purchase. Thus, for example, if an institution claims loans made by an affiliated mortgage company as loan originations, the institution may not also count the loans as purchased loans if it later purchases the loans from its affiliate. *See also* Q&As § ____.22(c)(2)(ii)—1 and § ____.22(c)(2)(ii)—2.

§ ____.22(c)(2)(ii) If an institution elects to have its supervisory agency consider loans within a particular lending category made by one or more of the institution's affiliates in a particular assessment area, the institution shall elect to have the agency consider all loans within that lending category in that particular assessment area made by all of the institution's affiliates

§ ____.22(c)(2)(ii)—1: *Regardless of examination type, how is this constraint on affiliate lending applied?*

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has several affiliates, including a mortgage company that makes loans in the institution's assessment area. If the institution elects to include the mortgage company's home mortgage loans, it must include all of its affiliates' home mortgage loans made in its assessment area. In addition, the institution cannot elect to include only those low- and moderate-income home mortgage loans made by its affiliates and not home mortgage loans to middle- and upper-income individuals or areas.

§ ____.22(c)(2)(ii)—2: *Regardless of examination type, how is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a consortium or a third party

§ ____.22(d)—1: *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation ("CDC") that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. Q&A § ____.23(b)—1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests. (Note that in connection with an intermediate small institution's CRA performance evaluation, community development loans, including pro-rata shares of community development loans, are considered only in the community development test.)

§ ____.22(d)—2: *Regardless of examination type, how will examiners evaluate loans made by consortia or third parties?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will be considered only if they qualify as community development loans and will be considered only under the community development criterion. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under the lending test or community development test criteria appropriate to them depending on the type of loan and type of examination.

§ ____.22(d)—3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR ____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, regardless of examination type, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR ____.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the

financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR ____.22(d).

§ ____.23—Investment test

§ ____.23(a) Scope of test

§ ____.23(a)—1: *May an institution, regardless of examination type, receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1. Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between "direct" and "indirect" investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ ____.23(a)—2: *In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A2. There are several ways to demonstrate that the institution's investment in a nationwide fund meets the geographic requirements, and the agencies will employ appropriate flexibility in this regard in reviewing information the institution provides that reasonably supports this determination.

As an initial matter, in making this determination, the agencies would consider whether the purpose, mandate, or function of the fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation. At the institution's option, written documentation provided by fund managers in connection with the institution's investment indicating that the fund will use its best efforts to invest in a qualifying activity that meets the institution's geographic requirements also may be used for these purposes. Similarly, at the institution's option, information that a fund has explicitly earmarked its projects or investments to its investors and their specific assessment area(s) or broader statewide or regional areas that include the assessment area(s) also may be used for these purposes. (If any documentation that has been provided at the institution's option as described above clearly indicates that the fund "double-counts" investments, by earmarking the same dollars or the same portions of projects or investments in a particular geography to more than one investor, the investment may be determined not to meet the geographic requirements of the CRA regulations.) In addition, at the institution's option, an allocation method may be used to permit the institution to claim a pro-rata share of each project of the fund.

Nationwide funds are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. Prior to investing in such a fund, an institution should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations. *See also* Q&As § ____.12(h)—6 and § ____12(h)—7 (additional information about recognition of investments benefiting an area outside an institution's assessment area(s).)

§ ____.23(b) Exclusion

§ ____.23(b)—1: *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming its pro rata share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would receive consideration under the investment test for only the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ ____.23(b)—2: *If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for

purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§ ____.23(e) Performance criteria

§ ____.23(e)—1: *When applying the four performance criteria of 12 CFR ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. By applying all the criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the investment test than a qualified investment with a higher dollar amount that has fewer qualitative enhancements. The criteria permit an examiner to qualitatively weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low- or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Performance Evaluation. See also Q&A § ____.12(t)—8 for a discussion about the qualitative consideration of prior period investments.

§ ____.23(e)—2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service test

§ ____.24(d) Performance criteria—retail banking services

§ ____.24(d)—1: *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines ("ATMs"). The principal focus is on an institution's current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. However, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ ____.24(d)—2: *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDAs)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA account holders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA account holders or prospective account holders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to 12 CFR ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. *See, e.g.,* Q&A § ____.12(i)—3.

Note that all types of institutions may participate in IDA programs. Their IDA activities are evaluated under the performance criteria of the type of examination applicable to the particular institution.

§ ____.24(d)(3) Availability and effectiveness of alternative systems for delivering retail banking services

§ ____.24(d)(3)—1: *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and

moderate-income areas and individuals. The list of systems in the regulation is not intended to be comprehensive.

§ ____.24(d)(3)—2: *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.24(e) Performance criteria—community development services

§ ____.24(e)—1: *Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?*

A1. At an institution's option, the agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test (*see* Q&A § ____.23(b)—1). For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. *See* 12 CFR ____.22(c) and ____.23(c).

§ ____.25 Community development test for wholesale or limited purpose institutions

§ ____.25(a) Scope of test

§ ____.25(a)—1: *How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of "bank" in the Bank Holding Company Act (the BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?*

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHC Act and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under 12 CFR ____.25(d)(2) (community development test—indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in 12 CFR ____.21(b)(4).

§ ____.25(d) Indirect activities

§ ____.25(d)—1: *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding 12 CFR ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to assessment area(s)

§ ____.25(e)—1: *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community development performance rating

§ ____.25(f)—1: *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment, and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small institution performance standards

§ ____.26—1: *When evaluating a small or intermediate small institution's performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates?*

A1. Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small and intermediate small institutions. *See* Q&As addressing 12 CFR ____.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in an institution's assessment area.

§ ____.26(a) Performance criteria

§ ____.26(a)(2) Intermediate small institutions

§ ____.26(a)(2)—1: *When is an institution examined as an intermediate small institution?*

A1. When a small institution has met the intermediate small institution asset threshold delineated in 12 CFR ____.12(u)(1) for two consecutive calendar year-ends, the institution may be examined under the intermediate small institution examination procedures. The regulation does not specify an additional lag period between becoming an intermediate small institution and being examined as an intermediate small institution, as it does for large institutions, because an intermediate small institution is not subject to CRA data collection and reporting requirements. Institutions should contact their primary regulator for information on examination schedules.

§ ____.26(b) Lending test

§ ____.26(b)—1: *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider "lending-related activities," including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

Although lending-related community development activities are evaluated under the community development test applicable to intermediate small institutions, these activities may also augment the loan-to-deposit ratio analysis (12 CFR ____.26(b)(1)) and the percentage of loans in the intermediate small institution's assessment area analysis (12 CFR ____.26(b)(2)), if appropriate.

§ ____.26(b)—2: *What is meant by "as appropriate" when referring to the fact that lending-related activities will be considered, "as appropriate," under the various small institution performance criteria?*

A2. "As appropriate" means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request, provided they have not also been considered under the community development test applicable to intermediate small institutions.

§ ____.26(b)—3: *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§ ____.26(b)—4: *Under the small institution lending test performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments, and letters of credit.

§ ____.26(b)—5: *Under the small institution lending test performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution lending test performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purpose of determining whether a small institution that is not an intermediate small institution receives a satisfactory CRA rating.

§ ____.26(b)(1) Loan-to-deposit ratio

§ ____.26(b)(1)—1: *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ ____.26(b)(1)—2: *How is the "reasonableness" of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ ____.26(b)(1)—3: *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(b)(2) Percentage of lending within assessment area(s)

§ ____.26(b)(2)—1: *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the institution's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions; loan demand; the institution's size, financial

condition, business strategies, and branching network; and other aspects of the institution's lending record.

§ ____.26(b)(3) & (4) Distribution of lending within assessment area(s) by borrower income and geographic location

§ ____.26(b)(3) & (4)—1: *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with very few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use loan size as a proxy for estimating borrower characteristics, where appropriate.

§ ____.26(c) Intermediate small institution community development test

§ ____.26(c)—1: *How will the community development test be applied flexibly for intermediate small institutions?*

A1. Generally, intermediate small institutions engage in a combination of community development loans, qualified investments, and community development services. An institution may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the institution's assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the institution's capacity.

An intermediate small institution has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities. Appropriate levels of each of these activities would depend on the capacity and business strategy of the institution, community needs, and number and types of opportunities for community development.

§ ____.26(c)(3) Community development services

§ ____.26(c)(3)—1: *What will examiners consider when evaluating the provision of community development services by an intermediate small institution?*

A1. Examiners will consider not only the types of services provided to benefit low- and moderate-income individuals, such as low-cost checking accounts and low-cost remittance services, but also the provision and availability of services to low- and moderate-income individuals, including through branches and other facilities located in low- and moderate-income areas. Generally, the presence of branches located in low- and moderate-income geographies will help to demonstrate the availability of banking services to low- and moderate-income individuals.

§ ____.26(c)(4) Responsiveness to community development needs

§ ____.26(c)(4)—1: *When evaluating an intermediate small institution's community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?*

A1. When evaluating an intermediate small institution's community development record, examiners will consider not only quantitative measures of performance, such as the number and amount of community development loans, qualified investments, and community development services, but also qualitative aspects of performance. In particular, examiners will evaluate the responsiveness of the institution's community development activities in light of the institution's capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity (its performance context). Examiners also will consider the results of any assessment by the institution of community development needs, and how the institution's activities respond to those needs.

An evaluation of the degree of responsiveness considers the following factors: the volume, mix, and qualitative aspects of community development loans, qualified investments, and community development services. Consideration of the qualitative aspects of performance recognizes that community development activities sometimes require special expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. (However, "innovativeness" and "complexity," factors examiners consider when evaluating a large institution under the lending, investment, and service tests, are not criteria in the intermediate small institutions' community development test.) In some cases, a smaller loan may have more qualitative benefit to a community than a larger loan. Activities are considered particularly responsive to community development needs if they benefit low- and moderate-income individuals in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. Activities are also considered particularly responsive to community development needs if they benefit low- or moderate-income geographies.

§ ____.26(d) Performance rating

§ ____.26(d)—1: *How can a small institution that is not an intermediate small institution achieve an "outstanding" performance rating?*

A1. A small institution that is not an intermediate small institution that meets each of the standards in the lending test for a "satisfactory" rating and exceeds some or all of those standards may warrant an "outstanding" performance rating. In assessing performance at the "outstanding" level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an "outstanding" performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a "satisfactory" rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its

assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated "outstanding" based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated "outstanding."

§ ____.26(d)—2: *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&As § ____.12(h)—6 and § ____.12(h)—7.

§ ____.27—Strategic plan

§ ____.27(c) Plans in general

§ ____.27(c)—1: *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§ ____.27(c)—2: *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan content

§ ____.27(f)(1) Measurable goals

§ ____.27(f)(1)—1: *How should annual measurable goals be specified in a strategic plan?*

A1. Annual measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan approval

§ ____.27(g)(2) Public participation

§ ____.27(g)(2)—1: *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned ratings

§ ____.28—1: *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a "satisfactory" or "outstanding" CRA rating?*

A1. No. The performance criterion of "innovativeness" applies only under the lending, investment, and service tests applicable to large institutions and the community development test applicable to wholesale and limited purpose institutions. Moreover, even under these tests, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a "needs to improve" CRA rating. However, under these tests, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating. See also Q&A § ____.26(c)(4)—1 for a discussion about responsiveness to community development needs under the community development test applicable to intermediate small institutions.

§ ____.28(a) Ratings in general

§ ____.28(a)—1: *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state ("multistate institution") will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

§ ____.28(a)—2: *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state ("single-state institution") will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ ____.28(a)—3: *How do the agencies weight performance under the lending, investment, and service tests for large retail institutions?*

A3. A rating of "outstanding," "high satisfactory," "low satisfactory," "needs

to improve," or "substantial noncompliance," based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

§ ____.28(b) Lending, investment, and service test ratings

§ ____.28(b)—1: *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A1. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ ____.28(c) Effect of evidence of discriminatory or other illegal credit practices

§ ____.28(c)—1: *What is meant by "discriminatory or other illegal credit practices"?*

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of:

- The Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- The Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees, or kickbacks in connection with certain mortgage transactions; and
- The Federal Trade Commission Act regarding unfair or deceptive acts or practices.

Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§ ____.29—Effect of CRA performance on applications

§ ____.29(a) CRA performance

§ ____.29(a)—1: *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In reviewing applications in which CRA performance is a relevant factor, information from a CRA examination of the institution is a particularly important consideration. The examination is a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent, or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant

to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§ ____.29(a)—2: *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested parties

§ ____.29(b)—1: *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the application process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' decisions. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

§ ____.29(b)—2: *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. The agencies do not monitor compliance with nor enforce these agreements.

§ ____.41—Assessment area delineation

§ ____.41(a) In general

§ ____.41(a)—1: *How do the agencies evaluate* "*assessment areas*" *under the CRA regulations?*

A1. The rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § ____.41(e).

§ ____.41(a)—2: *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ ____.41(a)—3: *Can a financial institution identify a specific racial or ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography. The only exception to the requirement to delineate an assessment area based on geography is that an institution, the business of which predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area, may delineate its entire deposit customer base as its assessment area.

§ ____.41(c) Geographic area(s) for institutions other than wholesale or limited purpose institutions

§ ____.41(c)(1) Generally consist of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions

§ ____.41(c)(1)—1: *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts ("geographies") in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ ____.41(c)(1)—2: *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town, or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with 12 CFR ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to geographic area(s)

§ ____.41(d)—1: *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts) in their assessment areas and generally should include entire political subdivisions. Because census tracts are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on delineation of an assessment area

§ ____.41(e)(3) May not arbitrarily exclude low- or moderate-income geographies

§ ____.41(e)(3)—1: *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

• Income levels in the institution's assessment area(s) and surrounding geographies;
• Locations of branches and deposit-taking ATMs;
• Loan distribution in the institution's assessment area(s) and surrounding geographies;
• The institution's size;
• The institution's financial condition; and
• The business strategy, corporate structure, and product offerings of the institution.

§ ____.41(e)(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless located in a multistate MSA

§ ____.41(e)(4)—1: *What are the maximum limits on the size of an assessment area?*

A1. An institution may not delineate an assessment area extending substantially across the boundaries of an MSA unless the MSA is in a combined statistical area (CSA)). Although more than one MSA in a CSA may be delineated as a single assessment area, an institution's CRA performance in individual MSAs in those assessment areas will be evaluated using separate median family incomes and other relevant information at the MSA level rather than at the CSA level.

An assessment area also may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within an MSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution must delineate separate assessment areas for the areas inside and outside an MSA if the area served by the institution's branches outside the MSA extends substantially beyond the MSA boundary. Similarly, the institution must delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§ ____.41(e)(4)—2: *May an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area, assuming branches or deposit-taking ATMs are located in each county and the MSA. So, in this example, there would be three assessment areas. However, if the MSA and the two counties were in the same CSA, then the institution could delineate only one assessment area including them all. But, the institution's CRA performance in the MSAs and the non-MSA counties in that assessment area would be evaluated using separate median family incomes and other relevant information at the MSA and state, non-MSA level, rather than at the CSA level.

§ ____.42—Data collection, reporting, and disclosure

§ ____.42—1: *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. ("Small institution" is defined in the agencies' CRA regulations at § ____.12(u).) Examples describing the data collection requirements of institutions, in particular those that have just surpassed the asset-size threshold of a small institution, may be found on the FFIEC Web site at *http://www.ffiec.gov/cra.* All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the subsequent year.

The Board of Governors of the Federal Reserve System processes the reports for all of the primary regulators. Data may be submitted on diskette, CD–ROM, or via Internet e-mail. CRA respondents are encouraged to send their data via the Internet. E-mail a properly encrypted CRA file (using the FFIEC software only Internet e-mail export feature) to the following e-mail address: *crasub@frb.gov.* Please mail diskette or CD–ROM submissions to: Board of Governors of the Federal Reserve System, Attention: CRA Processing, 20th & Constitution Avenue, NW., MS N502, Washington, DC 20551–0001.

§ ____.42—2: *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs may create a data submission using the File Specifications and Edit Validation Rules that have been set forth to assist with electronic data submissions. For information about specific electronic formatting procedures, contact the CRA Assistance Line at (202) 872–7584 or click on "How to File" at *http://www.ffiec.gov/cra.*

§ ____.42—3: *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report and TFR instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide information about such line increases to examiners as "other loan data."

§ ____.42—4: *Should renewals of lines of credit be collected and/or reported?*

A4. Renewals of lines of credit for small business, small farm, consumer, or community development purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. *See* Q&A § ____.42(a)—5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 203.

§ ____.42—5: *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

• Two institutions are exempt from CRA collection and reporting requirements because of asset size. The

institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets at least equal to the small institution asset-size threshold amount described in 12 CFR ____.12(u)(1).

• Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.

• Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§ ____.42—6: *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may download it from the FFIEC Web site at *http://www.ffiec.gov/cra.* For assistance, institutions may call the CRA Assistance Line at (202) 872–7584 or send an e-mail to CRAHELP@FRB.GOV.

§ ____.42—7: *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions that are designated as wholesale or limited purpose institutions must be prepared to identify those loans, investments, and services to be evaluated under the community development test.

§ ____.42(a) Loan information required to be collected and maintained

§ ____.42(a)—1: *Must institutions collect and report data on all commercial loans of $1 million or less at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC–C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either "Loans secured by nonfarm or nonresidential real estate" or "Commercial and industrial loans" in Part I of the Call Report or TFR.

§ ____.42(a)—2: *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain, in a standardized, machine-readable format, information on each small business loan originated or purchased for each calendar year:

• A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

• The loan amount at origination;

• The loan location; and

• An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§ ____.42(a)—3: *Will farm loans need to be segregated from business loans?*

A3. Yes.

§ ____.42(a)—4: *Should institutions collect and report data on all agricultural loans of $500,000 or less at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either "Loans to finance agricultural production and other loans to farmers" or "Loans secured by farmland" in Part I of the Call Report or TFR.

§ ____.42(a)—5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a *renewal* refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is not necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted. However, a demand loan that is merely reviewed annually is not reported as a renewal because the term of the loan has not been extended.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§ ____.42(a)—6: *Does a loan to the "fishing industry" come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans "made for the purpose of financing fisheries and forestries, including loans to commercial fishermen" as a component of the definition for "Loans to finance agricultural production and other loans to farmers." Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the regulation, capture both "Loans to finance agricultural production and other loans to farmers" and "Loans secured by farmland."

§ ____.42(a)—7: *How should an institution report a home equity line of credit, part of which is for home improvement purposes and part of which is for small business purposes?*

A7. When an institution originates a home equity line of credit that is for both home improvement and small business purposes, the institution has the option of reporting the portion of the home equity line that is for home improvement purposes as a home improvement loan under HMDA. Examiners would consider that portion

of the line when they evaluate the institution's home mortgage lending. When an institution refinances a home equity line of credit into another home equity line of credit, HMDA reporting continues to be optional. If the institution opts to report the refinanced line, the entire amount of the line would be reported as a refinancing and examiners will consider the entire refinanced line when they evaluate the institution's home mortgage lending.

If an institution that has originated a home equity line of credit for both home improvement and small business purposes (or if an institution that has refinanced such a line into another line) chooses not to report a home improvement loan (or a refinancing) under HMDA, and if the line meets the regulatory definition of a "community development loan," the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as "Other Secured Lines/Loans for Purposes of Small Business."

§ ____.42(a)—8: *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§ ____.42(a)—9: *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with "0" in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ ____.42(a)—10: *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices and Bank Secrecy Act regulations dictate that institutions know the location of their customers and loan collateral. Further, Bank Secrecy Act regulations specifically state that a post office box is not an acceptable address. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number, the institution knows the location (i.e., the census tract) of the borrower or loan collateral. Once the institution has this information available, it should assign the census tract to that location (geocode) and report that information as required under the regulation.

However, if an institution cannot determine a rural borrower's street address, and does not know the census tract, the institution should report the borrower's state, county, MSA or metropolitan division, if applicable, and "NA," for "not available," in lieu of a census tract code.

§ ____.42(a)(2) Loan amount at origination

§ ____.42(a)(2)—1: *When an institution purchases a small business or small farm loan, in whole or in part, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, including loan participations, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's and TFR's use of the "original amount of the loan" to determine whether a loan should be reported as a "loan to a small business" or a "loan to a small farm" and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

§ ____.42(a)(2)—2: *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

§ ____.42(a)(2)—3: *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business's employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the "small business loan" definition in the regulation are met. The credit card program's "amount at origination" is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The loan location

§ ____.42(a)(3)—1: *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the small business borrower's headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of gross annual revenue

§ ____.42(a)(4)—1: *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less.

Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, such as a sole proprietor, the institution should not adjust the borrower's revenues for reporting purposes.

§ ____.42(a)(4)—2: *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ ____.42(a)(4)—3: *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue and, therefore, should not be used.

§ ____.42(a)(4)—4: *When indicating the gross annual revenue of small business or small farm borrowers, do institutions rely on the gross annual revenue or the adjusted gross annual revenue of their borrowers?*

A4. Institutions rely on the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or small farm borrowers when indicating the revenue of small business or small farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and small farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect and rely upon the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution should enter the code "revenues not known." (*See* Q&A § ____.42(a)(4)—2.)

§ ____.42(b) Loan information required to be reported

§ ____.42(b)(1) Small business and small farm loan data

§ ____.42(b)(1)—1: *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans; and
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community development loan data

§ ____.42(b)(2)—1: *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ ____.42(b)(2)—2: *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA, and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definition of "home mortgage loan," "small business loan," or "small farm loan" only in those respective categories even if they also meet the definition of "community development loan." As a practical matter, this is not a disadvantage for institutions evaluated under the lending, investment, and service tests because any affordable housing mortgage, small business, small farm, or consumer loan that would otherwise meet the definition of "community development loan" will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive consideration under the borrower characteristic criteria of the lending test. *See* Q&A § ____.22(b)(2) & (3)—4.

Limited purpose and wholesale institutions that meet the size threshold for reporting purposes also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories. However, these institutions must also report any loans from those categories that meet the regulatory definition of "community development loan" as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm, and consumer loans.

§ ____.42(b)(2)—3: *When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. It depends. As long as the primary purpose of the loan is a community development purpose as described in Q&A § ____.12(h)—8, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. Even though the entire amount of the loan is reported, as noted in Q&A § ____.22(b)(4)—1, examiners may make qualitative distinctions among

community development loans on the basis of the extent to which the loan advances the community development purpose.

In addition, if an institution that reports CRA data elects to request consideration for loans that provide mixed-income housing where only a portion of the loan has community development as its primary purpose, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by federal, state, or local government, the institution must report only the pro rata dollar amount of the portion of the loan that provides affordable housing to low- or moderate-income individuals. The pro rata dollar amount of the total activity will be based on the percentage of units that are affordable. See Q&A § ____.12(h)—8 for a discussion of "primary purpose" of community development describing the distinction between the types of loans that would be reported in full and those for which only the pro rata amount would be reported.

§ ____.42(b)(2)—4: *When an institution purchases a participation in a community development loan, which amount should the institution report—the entire amount of the credit originated by the lead lender or the amount of the participation purchased?*

A4. The institution reports only the amount of the participation purchased as a community development loan. However, the institution uses the entire amount of the credit originated by the lead lender to determine whether the original credit meets the definition of a "loan to a small business," "loan to a small farm," or "community development loan." For example, if an institution purchases a $400,000 participation in a business credit that has a community development purpose, and the entire amount of the credit originated by the lead lender is over $1 million, the institution would report $400,000 as a community development loan.

§ ____.42(b)(2)—5: *Should institutions collect and report data about community development loans that are refinanced or renewed?*

A5. Yes. Institutions should collect information about community development loans that they refinance or renew as loan originations. Community development loan refinancings and renewals are subject to the reporting limitations that apply to refinancings and renewals of small business and small farm loans. *See* Q&A § ____.42(a)—5.

§ ____.42(b)(3) Home mortgage loans

§ ____.42(b)(3)—1: *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional data collection and maintenance

§ ____.42(c)(1) Consumer loans

§ ____.42(c)(1)—1: *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of borrower

§ ____.42(c)(1)(iv)—1: *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ ____.42(c)(1)(iv)—2: *May an institution list "0" in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

§ ____.42(c)(1)(iv)—3: *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§ ____.42(c)(1)(iv)—4: *Whose income does an institution collect when a consumer loan is made to more than one borrower?*

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ ____.42(c)(2) Other loan data

§ ____.42(c)(2)—1: *Schedule RC–C, Part II of the Call Report does not allow banks to report loans for commercial and industrial purposes that are secured by residential real estate, unless the*

*security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See *Q&A § ____.12(v)—3.) Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May a bank collect this information to supplement its small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the bank should collect and report information about the loans as community development loans. Otherwise, *at the bank's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA evaluation of its small business lending. A bank may collect this information as "Other Secured Lines/Loans for Purposes of Small Business" in the individual loan data. This information should be maintained at the bank but should *not* be submitted for central reporting purposes.

§ ____.42(c)(2)—2: *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§ ____.42(c)(2)—3: *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR ____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as "other loan data" under 12 CFR ____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on affiliate lending

§ ____.42(d)—1: *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may provide examiners with either the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and availability of public file

§ ____.43(a) Information available to the public

§ ____.43(a)(1) Public comments related to an institution's CRA performance

§ ____.43(a)(1)—1: *What happens to comments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§ ____.43(a)(1)—2: *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (12 CFR ____.26(b)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

§ ____.43(a)(2) CRA performance evaluation

§ ____.43(a)(2)—1: *May an institution include a response to its CRA performance evaluation in its public file?*

A1. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. *See* 12 CFR ____.43(b)(5). The institution must update the description on a quarterly basis.

§ ____.43(b) Additional information available to the public

§ ____.43(b)(1) Institutions other than small institutions

§ ____.43(b)(1)—1: *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§ ____.43(b)(1)—2: *May an institution retain its CRA disclosure statement in electronic format in its public file, rather than printing a hard copy of the CRA disclosure statement for retention in its public file?*

A2. Yes, if the institution can readily print out its CRA disclosure statement from an electronic medium (*e.g.,* CD, DVD, or Internet Web site) when a consumer requests the public file. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the institution should provide the CRA disclosure statement in a paper copy, or in another format acceptable to the requestor, within five calendar days, as required by 12 CFR ____.43(c)(2)(ii).

§ ____.43(c) Location of public information

§ ____.43(c)—1: *What is an institution's "main office"?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.43(c)—2: *May an institution maintain a copy of its public file on an intranet or the Internet?*

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in § ____.43 of the regulations. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in 12 CFR ____.43(c)(1) and (2) as to what information is required to be kept at a

main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§ ____.44—Public notice by institutions

§ ____.44—1: *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of planned examination schedule

§ ____.45—1: *Where will the agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The agencies may use the **Federal Register,** a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

§ ____.45—2: *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

APPENDIX A to Part ____—Ratings

APPENDIX A to Part ____—1: *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution other than an intermediate small institution that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area. Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

APPENDIX B to Part ____—CRA Notice

APPENDIX B to Part ____—1: *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: For community banks, the address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at *http://www.occ.gov*. For banks supervised under the large bank program, insert "Large Bank Supervision, 250 E Street, SW., Washington, DC 20219–0001." For banks supervised under the mid-size/credit card bank program, insert "Mid-Size and Credit Card Bank Supervision, 250 E Street, SW., Washington, DC 20219–0001."

OCC-, FDIC-, and Board-supervised institutions: "Officer in Charge of Supervision" is the title of the responsible official at the appropriate Federal Reserve Bank.

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End of text of the Interagency Questions and Answers

Dated: January 27, 2010.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 2, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 18th day of February, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: February 12, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–4903 Filed 3–10–10; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

Federal Register

Thursday,
March 11, 2010

Part III

Department of Justice

Antitrust Division

United States v. Daily Gazette Company and Medianews Group, Inc.; Proposed Final Judgment and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Daily Gazette Company and Medianews Group, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of West Virginia in *United States of America* v. *Daily Gazette Company and MediaNews Group, Inc,* No. 2:07–cv–0329. On May 22, 2007, the United States filed a Complaint alleging that the Defendants violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 & 2, by entering into a May 2004 transaction that consolidated ownership and control of the only two daily newspapers in Charleston, West Virginia under the Daily Gazette Company and eliminated competition between the Defendants. The proposed Final Judgment, filed on January 20, 2010, requires the Defendants to restructure their joint operating arrangement to provide MediaNews Group with governance rights and independent control over the editorial operations of the *Charleston Daily Mail;* prohibits the Defendants from discriminating against the *Daily Mail* in circulation and advertising sales and other key aspects of newspaper operations; requires the Defendants to take remedial action to rebuild the circulation of the *Daily Mail* by offering specially-discounted subscriptions for a period of six months; establishes various economic incentives for MediaNews to compete with the Daily Gazette Company for readers; prevents the unjustified termination of publication of the *Daily Mail* unless it is financially failing and the United States approves; and specifies procedures for the disposition of the *Daily Mail's* intellectual property in the event that the newspaper ceases publication. The Final Judgment will expire ten years from the date of entry unless the Court grants an extension.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 5th Street, NW., Room 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the Southern District of West Virginia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0468.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* v. DAILY GAZETTE COMPANY, and MEDIANEWS GROUP, INC. *Defendants.*

Civil Action No. 2:07–0329.

Filed: May 22, 2007.

Stamp: COPY—The original was filed in the Clerk's Office at Charleston on May 22, 2007.

TERESA L. DEPPNER, CLERK, U.S. District Court, Southern District of West Virginia

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief to prevent and restrain defendants Daily Gazette Company ("Gazette Company") and MediaNews Group, Inc. ("MediaNews Group") from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 & 2, as amended. The United States complains and alleges as follows:

I. Nature of the Action

1. This lawsuit challenges a series of transactions in 2004 that extinguished competition between Charleston's two daily newspapers by combining *The Charleston Gazette* and the *Charleston Daily Mail* under the common ownership of Gazette Company as part of a plan to terminate the publication of the *Charleston Daily Mail* and leave Charleston with a single daily newspaper.

2. For over 100 years, the citizens of Charleston have enjoyed the benefits of two local daily newspapers. Between 1958 and May 7, 2004, the owners of the *Charleston Gazette* and the *Charleston Daily Mail* eliminated some—but not all—elements of competition between the two newspaper owners by forming a joint operating agreement ("JOA"), referred to as Charleston Newspapers. Under the agreement, the two newspapers coordinated certain financial and operational aspects of producing the two newspapers—principally, the printing, distribution, and sales of subscriptions and advertisements. Importantly, however, the two newspapers did not combine all of their operations or ownership. Until May 2004, the Gazette Company maintained separate ownership of and independently made decisions regarding the content and style of the *Charleston Gazette* that determined the attractiveness and worth of the paper to readers. Similarly, MediaNews Group and its predecessors maintained separate ownership of the *Charleston Daily Mail* and independently made all decisions regarding the content and style of the *Charleston Daily Mail* that determined the attractiveness and worth of the paper to readers in the Charleston area. The attractiveness to readers of each paper directly affected the value of the separate ownership interest of each company.

3. On May 7, 2004, Gazette Company, the *Charleston Gazette's* owner, acquired all of the assets of the *Charleston Daily Mail,* its only competitor, from MediaNews Group. On that same day, Gazette Company and MediaNews Group also entered into a new arrangement that gave MediaNews Group nominal responsibility for the news and editorial content of the *Charleston Daily Mail,* but gave Gazette Company ultimate control over the budgets, management, and news gathering and reporting of both newspapers, as well as the right to receive all the profits of both newspapers. The arrangement also gave Gazette Company the unilateral right to shut down the *Charleston Daily Mail.*

4. The May 2004 transactions eliminated all remaining competition between the owners of the papers by consolidating the two papers under the ownership and control of Gazette Company as part of a plan by the Gazette Company to terminate publication of the *Charleston Daily Mail* and thereby force upon consumers in Charleston a single newspaper. Gazette Company's plan was to use that control to weaken the *Daily Mail* to the point where it would fail and could be eliminated as a competitor to the *Charleston Gazette,* and Gazette Company acted quickly to carry out that

plan—until the Department's investigation interrupted those efforts.

5. Because the May 2004 transactions were part of a plan to terminate the publication of one of the two newspapers, the transactions eliminated any claim that the arrangement is immune from antitrust scrutiny under the Newspaper Preservation Act ("NPA"), 15 U.S.C. 1801, *et seq.* The NPA permits JOAs to be used to coordinate many of the commercial activities of otherwise independent newspapers, including the prices the newspapers charge for subscriptions and advertising, but only if the participants meet the Act's requirements by, *inter alia,* preserving the existence of two newspapers with independent editorial and reportorial operations. The May 2004 transactions invalidated any claim by Charleston Newspapers to antitrust immunity under the NPA because they were part of a plan to terminate publication of the *Charleston Daily Mail,* leaving only one daily newspaper in the Charleston area.

6. Without the benefit of antitrust immunity, the arrangement and the May 2004 transactions violated the antitrust laws. The *Charleston Gazette* and the *Charleston Daily Mail* are the only two daily newspapers in the Charleston area, so elimination of competition between them unreasonably restrains competition in two distinct respects. First, by consolidating ownership of the two newspapers under Gazette Company, the transactions eliminated the economic incentives that previously had existed for each owner to increase the attractiveness of its newspaper to readers in the Charleston area. This reduction in competition violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 and 2, and Section 7 of the Clayton Act, 15 U.S.C. 18. Second, the arrangement eliminated competition between the two newspapers in the sale of subscriptions and advertising. Because the two newspapers did not enjoy antitrust immunity under the NPA at least as of May 7, 2004, and because, as of May 2004, neither of the two papers qualified as a failing firm within the meaning of the antitrust laws, such an elimination of competition violated Sections 1 and 2 of the Sherman Act.

7. Consequently, as discussed more fully herein, the United States seeks, *inter alia,* an order: (a) Rescinding the May 7 transactions; and (b) requiring Gazette Company and MediaNews Group to restore the *Charleston Daily Mail's* competitiveness to the level that existed prior to the May 7 transactions.

II. Jurisdiction and Venue

8. Both Gazette Company and MediaNews Group are engaged in, and their activities substantially affect, interstate commerce. Through subsidiaries and partnerships it controls, Gazette Company sells advertising, which is published in the *Charleston Gazette* and the *Charleston Daily Mail,* to national advertisers located throughout the United States. In addition, Gazette Company and Media News Group regularly publish news, syndicated material, and other information in the *Charleston Gazette* and the *Charleston Daily Mail* that is gathered from other states and nations. In turn, they communicate to newspapers outside West Virginia the news and information that their staffs gather.

9. The Court has subject matter jurisdiction under 15 U.S.C. 4 and 25, and 28 U.S.C. 1331, 1337(a), and 1345, to prevent and restrain the Defendants from continuing to violate 15 U.S.C. 1, 2 and 18.

10. The defendants maintain offices, transact business, and are found in Charleston, West Virginia. A substantial part of the events giving rise to the violations alleged herein occurred in Charleston, West Virginia. Accordingly, this Court has personal jurisdiction over the Defendants and venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391.

III. Defendants

11. Defendant Gazette Company, the owner and publisher of the *Charleston Gazette* and, since May 2004, the owner of the *Charleston Daily Mail,* is a privately-held corporation organized and existing under the laws of the State of West Virginia, with its principal place of business in Charleston, West Virginia. Through its subsidiaries, Daily Gazette Publishing Company LLC and Daily Gazette Holding Company LLC, and in its capacity as General Partner of Charleston Newspapers Holdings Limited Partnership, Gazette Company owns all the assets and controls all the business operations of Charleston Newspapers. Charleston Newspapers is responsible for printing, circulating, promoting and marketing both the *Charleston Gazette* and the *Charleston Daily Mail.*

12. Defendant MediaNews Group, the owner and publisher of the *Charleston Daily Mail* from about September 1998 until May 2004, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Denver, Colorado. MediaNews Group owns and publishes several dozen daily newspapers in various markets throughout the United States. On or about May 7, 2004, MediaNews Group sold the *Charleston Daily Mail* and related assets to Gazette Company. Today, MediaNews Group purports to provide "management and supervision" services for the *Charleston Daily Mail* in return for a fixed fee paid by Gazette Company. In reality, however, the news and editorial assets and resources of the *Charleston Daily Mail* are under the ownership and control of Gazette Company.

IV. Background

A. Competition Between the Two Newspaper Owners

13. For many years, the *Charleston Gazette,* founded in 1873, and the *Charleston Daily Mail,* founded in 1880, operated completely independently. In 1958, the then-owners of the two newspapers entered into a JOA, which combined the two newspapers' printing, advertising, subscription sales, and distribution functions under a single management. Congress, in 1970, seeking to preserve the ability of independent newspapers to reduce operating expenses through JOAs, gave JOA arrangements then in effect explicit, but limited, antitrust immunity when it passed the Newspaper Preservation Act, 15 U.S.C. 1801, *et seq.,* as long as they met certain requirements. To receive that immunity, Congress required, *inter alia,* that the newspapers in a JOA be separately owned or controlled, that they maintain separate newsroom staffs, that their editorial policies be "independently determined," and that at the time the JOA was entered, no more than one newspaper in the JOA "was likely to remain or become a financially sound publication * * *." *Id.*

14. Until May 7, 2004, the Gazette Company and MediaNews Group were equal partners in the JOA, with each company separately owning its respective newspaper. In addition, each company appointed half of the representatives to a JOA committee that approved all significant decisions, including each newspaper's budget and its advertising and subscription rates. That committee also selected a General Manager who was responsible for the Charleston JOA's day-to-day operations.

15. Within the Charleston JOA, each company shared profits and losses equally. However, each company had an independent economic incentive to increase the value of its respective newspaper ownership interest by attracting readers to that newspaper. The number of newspapers circulated or

sold is an important yardstick for measuring the franchise or sales value of a newspaper asset. In general, a newspaper that invests in increasing its quality and its appeal will attract more readers and advertisers, will have a longer lifespan, and will have an increased market value. Maintaining or increasing the value of a newspaper within a JOA can affect the outcome of, among other things, renegotiations of the terms or renewal of a JOA, negotiations over one or both JOA newspapers operating outside a JOA, and the identity and viability of the newspapers following the expiration or termination of a JOA. Thus, the owners of the Charleston newspapers had a variety of long and short-term economic incentives to compete to attract readers to their respective newspapers.

16. The owners of the *Charleston Gazette* and the *Charleston Daily Mail* competed vigorously against each other for readers prior to the May 7 transactions. They did so in various ways, such as seeking to generate original news and other content of interest to readers; trying to cover local news with greater depth, breadth and accuracy; breaking stories first; and offering the most attractive mix of news, features and editorials to readers. All of these decisions were outside the cooperation authorized under the JOA. This head to-head competition between the owners of the *Charleston Gazette* and the *Charleston Daily Mail* benefitted readers by giving them a choice between two daily newspapers with unique news and other content.

17. The *Charleston Gazette* and the *Charleston Daily Mail* remained consistently profitable through May 2004. Neither newspaper was in danger of failing in the near future.

B. Prelude to the May 7 Transactions

18. In late 2003, MediaNews Group negotiated to sell the *Charleston Daily Mail* along with MediaNews Group's 50 percent stake in the Charleston JOA to an experienced third-party newspaper company. On December 18, 2003, that company signed a Letter of Intent to purchase the *Charleston Daily Mail* and MediaNews Group's share of the Charleston JOA for $55 million. MediaNews Group, pursuant to a Right of First Refusal provision included in the Charleston JOA, was required to notify Gazette Company of the Letter of Intent and give Gazette Company the opportunity to match the terms offered by the third party.

19. Gazette Company sought to eliminate competition from the *Charleston Daily Mail,* rather than have a new owner continue that competition. Gazette Company achieved that goal by matching the third party's $55 million offer to acquire all of the ownership interest in the *Charleston Daily Mail.* During this time, Gazette Company developed a plan to shut down the *Charleston Daily Mail* and thus become the publisher of the sole remaining daily newspaper in Charleston. This plan, formulated with the advice of an outside consultant and shared with Gazette Company's lenders, called for the rapid reduction of the *Charleston Daily Mail's* circulation to a level at which the newspaper would no longer be economically viable (projected to be achieved within two or three years). Gazette Company believed it could then successfully argue to the Department of Justice that it should not oppose the termination of the JOA because the *Charleston Daily Mail* would be a "failing company." Over the years, the Department of Justice has elected not to challenge the decision of several newspaper companies to stop publishing one of the newspapers in a JOA based on a demonstration that circulation for the newspaper had shrunk to the point where the paper was not economically viable and no buyer could be found.

C. The May 7 Transactions

20. On May 7, 2004, Gazette Company and MediaNews Group entered into two simultaneous transactions that had the purpose and effect of lessening competition between the *Charleston Gazette* and the *Charleston Daily Mail,* with the ultimate goal of creating a monopoly. First, Gazette Company acquired from MediaNews Group control of the *Charleston Daily Mail*'s assets and MediaNews Group's 50 percent ownership interest in the Charleston JOA, for a purchase price of approximately $55 million. Second, the parties entered into a new contract that preserved the appearance that the *Charleston Daily Mail* was still being published by MediaNews Group but, in fact, gave Gazette Company control over Charleston Newspapers, which is now owned 100 percent by Gazette Company. Under the new arrangement, MediaNews Group no longer shares in the profits or losses of the two newspapers nor contributes to the capital costs of the business. The arrangement allows Gazette Company unfettered discretion to set the news and editorial budget for the *Charleston Daily Mail* and gives Gazette Company the sole power to terminate publication of the *Charleston Daily Mail* when it sees fit.

21. The May 7 transactions ended the prior JOA and created an entirely new arrangement between Gazette Company and MediaNews Group that does not meet the statutory definition of a JOA under Newspaper Preservation Act. The arrangement created by the May 7 transactions does not qualify for the limited antitrust immunity under the Newspaper Preservation Act for several reasons, including that it has not been approved by the Attorney General and that it was part of a plan to terminate one of the two daily newspapers.

22. The May 7 transactions gave Gazette Company, acting through its control of Charleston Newspapers, the unilateral right to take immediate and deliberate steps to implement its plan to shut down the *Charleston Daily Mail* by 2007. Shortly after the May 7 transactions were consummated, Gazette Company stopped all promotions and discounts for the *Charleston Daily Mail;* it stopped soliciting new readers for the *Charleston Daily Mail;* it stopped delivering the *Charleston Daily Mail* to thousands of customers; it attempted to convert existing *Charleston Daily Mail* home delivery subscribers to *Charleston Gazette* subscriptions; it stopped publishing a Saturday edition of the *Charleston Daily Mail;* it allowed almost half of the *Charleston Daily Mail*'s reporters to leave the newspaper without permitting replacements, thus crippling the ability of the *Charleston Daily Mail* to cover the news; and it cut the *Charleston Daily Mail*'s newsroom budget substantially in both 2004 and 2005, which forced the *Charleston Daily Mail* to continue reducing the breadth and depth of its news coverage.

23. As a result of Gazette Company's actions following the May 7 transactions, the *Charleston Daily Mail*'s circulation dropped from 35,076 in February 2004 to 23,985 in January 2005. This decline in circulation matched almost precisely the projections that Gazette Company and its consultants made as part of Gazette Company's pre-acquisition plan to shut down the *Charleston Daily Mail* by 2007. During that same February 2004 to January 2005 time period, the *Charleston Gazette*'s circulation increased slightly, peaking at over 52,000. Only after learning in or about December 2004 that the Antitrust Division of the Department of Justice was investigating the May 7 transactions did defendant Gazette Company take any steps to limit further damage to the *Charleston Daily Mail* caused by the actions described above. These steps, however, failed to restore the competitive conditions that had existed prior to the May 7 transactions.

V. Relevant Markets

A. The Relevant Product Markets

24. Local daily newspapers, such as the *Charleston Gazette* and the *Charleston Daily Mail,* provide a unique package of attributes for their readers. They provide national, state, and local news in a timely manner and in a convenient, hardcopy format. The news stories featured in such newspapers are more detailed, when compared to the news reported by radio or television, and they cover a wide range of topics of interest to local readers, not just major news highlights. Newspapers, such as the *Charleston Gazette* and the *Charleston Daily Mail,* are portable and allow the reader to read the news, advertisements, and other information at his or her own convenience. Readers also value other features of local daily newspapers, such as calendars of local events, movie and TV listings, classified advertisements, commercial advertisements, legal notices, comics, syndicated columns, and obituaries. Most readers of local daily newspapers in the Charleston area do not consider weekly newspapers, radio news, television news, Internet news, or any other media to be adequate substitutes for the two local daily newspapers serving the Charleston area. Thus, in the event of a small but significant increase in the price of local daily newspapers, the number of readers who would switch to other sources of local news and information, and would stop buying any daily local newspaper, would not be sufficient to make such a price increase unprofitable.

25. Advertising in the *Charleston Gazette* and the *Charleston Daily Mail* allows advertisers to reach a broad cross-section of consumers in the Charleston metropolitan area with a detailed message in a timely manner. A substantial portion of advertisers seeking to reach Charleston area consumers do not consider other types of advertising, such as that in weekly newspapers, on radio, on television, or on the Internet to be adequate substitutes for advertising in a local daily newspaper. Thus, in the event of a small but significant increase in the price of daily newspaper local advertising, the number of advertisers seeking to reach Charleston area consumers that would substitute these other types of advertising for advertising in a local daily newspaper, or would reduce their purchase of advertising in a local daily newspaper, would not be sufficient to make such a price increase unprofitable.

26. Accordingly, the sale of local daily newspapers to readers, and the sale of access to those readers to advertisers in those newspapers, each constitutes a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act and for purposes of Sections 1 and 2 of the Sherman Act.

B. The Relevant Geographic Market

27. The *Charleston Gazette* and the *Charleston Daily Mail* are both produced, published, and distributed to readers in the Charleston, West Virginia area (primarily Kanawha and Putnam Counties). Both newspapers provide news relating to the Charleston area in addition to state and national news.

28. Local daily newspapers that serve areas outside of the Charleston area do not regularly provide local news specific to the Charleston area. From a reader's standpoint, local daily newspapers serving areas outside of the Charleston area are not acceptable substitutes for the *Charleston Gazette* and the *Charleston Daily Mail.* For this reason, local daily newspapers outside of the Charleston area do not have any significant circulation or sales in Charleston. In the event of a small but significant increase in the price of local daily newspapers in Charleston, the number of readers who would substitute local daily newspapers outside of the Charleston area, and would stop buying any daily local newspaper, would not be sufficient to make such a price increase unprofitable.

29. The *Charleston Gazette* and the *Charleston Daily Mail* allow advertisers to target readers in the Charleston area. From the standpoint of an advertiser selling goods or services in the Charleston area, advertising in local daily newspapers serving areas outside of the Charleston area is not an acceptable substitute for advertising in the *Charleston Gazette* and the *Charleston Daily Mail.* In the event of a small but significant increase in the price of advertisements in local daily newspapers serving the Charleston area, the number of advertisers that would substitute local daily newspapers outside of the Charleston area, and would reduce their purchase of advertising in a local daily newspaper, would not be sufficient to make such a price increase unprofitable.

30. Accordingly, the Charleston, West Virginia area is a section of the country and a relevant geographic market within the meaning of Section 7 of the Clayton Act and for purposes of Sections 1 and 2 of the Sherman Act.

VI. Anticompetitive Effects

31. The May 7 transactions have and will continue to substantially lessen competition in the local daily newspaper market in the Charleston, West Virginia area by giving Gazette Company a monopoly in the Charleston local daily newspaper market. These transactions gave Gazette Company control over and the power to weaken or eliminate the *Charleston Daily Mail* and have already had, and will continue to have, among others, the following adverse effects on competition:

a. Reduced output (both quantity and quality) of newspapers; and

b. Increased prices to readers and advertisers.

VII. Entry

32. Entry by local daily newspapers into the Charleston, West Virginia, area is time-consuming and difficult, and is not likely to prevent the anticompetitive effects of the May 7 transactions by constraining Gazette Company's market power in the foreseeable future. Local daily newspapers incur significant fixed costs, many of which are sunk. Examples of these sunk costs include building or gaining access to a printing facility, establishing a distribution network, hiring reporters and editors, news gathering, and marketing the very existence of the new paper, all of which take substantial time. These costs often are termed "first copy" costs because they are costs that newspaper companies must incur before they print the first copies of their newspapers. In the event that the entrant fails or exits the newspaper industry, it cannot recover all of these costs, making entry risky and likely unprofitable. As a result, entry into Charleston daily newspaper market would not be timely, likely, or sufficient to prevent the harm to competition resulting from the May 7 transactions. Since May 7, 2004 there have been no attempts to enter the local daily newspaper market in the Charleston area.

VIII. Violations

Count One

(Violation of Section 7 of the Clayton Act)

33. Each and every allegation in paragraphs 1 through 32 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

34. Gazette Company and MediaNews Group are hereby named as defendants on Count One of this Complaint.

35. The May 7 transactions constitute an acquisition of assets by Gazette Company from MediaNews Group, the effect of which has been and is likely to continue to be to lessen competition substantially and to tend to create a monopoly in interstate trade and

commerce in the sale of local daily newspapers and advertising in those newspapers in the Charleston, West Virginia area, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

36. The May 7 transactions, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, have had the substantial anticompetitive effects set forth in ¶ 31 above, and, unless rescinded and restrained, those effects likely will continue.

Count Two

(Violation of Section 1 of the Sherman Act)

37. Each and every allegation in paragraphs 1 through 32 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

38. Gazette Company and MediaNews Group are hereby named as defendants on Count Two of this Complaint.

39. The May 7 transactions have eliminated the incentives and ability for MediaNews Group to compete effectively with Gazette Company in Charleston and have given Gazette Company the power to control and, ultimately, eliminate the *Charleston Daily Mail.* The arrangement created by the May 7 transactions is not immune under the Newspaper Preservation Act. For the above reasons, the May 7 transactions constitute a contract, combination or conspiracy by and among defendants that has unreasonably restrained trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

40. The May 7 transactions have had and will continue to have anticompetitive effects in the relevant market, including among others, those set forth in ¶ 31, above.

41. The above violation is continuing and will continue unless the relief requested hereinafter is granted.

Count Three

(Violation of Section 2 of the Sherman Act)

42. Each and every allegation in paragraphs 1 through 32 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

43. Gazette Company is hereby named as the defendant on Count Three of this Complaint.

44. Through the anticompetitive conduct described herein, Gazette Company has monopolized the Charleston, West Virginia, local daily newspaper market. As a result of defendants' actions, Gazette Company now possesses substantial monopoly power in the sale of local daily newspapers in the Charleston area. Gazette Company has willfully maintained, and unless restrained by the Court will continue to willfully maintain, this unlawful monopoly power through anticompetitive and unreasonably exclusionary conduct. Defendants' actions and practices constitute unlawful monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. 2.

IX. Requested Relief

45. The United States requests that the Court:

a. Adjudge and decree that the May 7, 2004, transactions are illegal, and their effects may be substantially to lessen competition, or to tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Adjudge and decree that the May 7 transactions constitute an illegal restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

c. Adjudge and decree that Gazette Company has unlawfully monopolized the Charleston daily newspaper market in violation of Section 2 of the Sherman Act, 15 U.S.C. 2;

d. Rescind the May 7 transactions;

e. Direct the defendants to restore the *Charleston Daily Mail* to its pre-May 7, 2004 competitive condition;

f. Award the United States such other and further relief as the Court may deem just and proper to redress and prevent recurrence of the above violations, to dissipate their anticompetitive effects, and to restore effective competition in the Charleston daily newspaper market; and

g. Award the United States the costs of this action.

DATED: May *22,* 2007

FOR PLAINTIFF UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAILY GAZETTE COMPANY, and MEDIANEWS GROUP, INC., Defendants.

Civil Action No. 2:07–0329.
Judge Copenhaver.
Magistrate Judge Stanley.
Filed: January 20, 2010

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on May 22, 2007, the United States and Defendants, Daily Gazette Company and MediaNews Group, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt adoption of certain procedures and prohibitions by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to agree to certain procedures and prohibitions for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the actions required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon

consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Sections 1 and 2 of the Sherman Act, as amended (15 U.S.C. 1 & 2).

II. Definitions

As used in this Final Judgment:

A. "*Charleston Daily Mail*" *means the Daily Newspaper of that name distributed in the Charleston, West Virginia Area.*

B. "*Charleston Gazette*" means the Daily Newspaper of that name distributed in the Charleston, West Virginia Area.

C. "Charleston Newspapers" means the unincorporated joint venture operating under the laws of West Virginia, with its principal place of business in Charleston, West Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their shareholders, directors, officers, managers, agents, and employees.

D. "Charleston Newspapers Holdings, L.P." means the Delaware Limited Partnership formed on May 7, 2004.

E. "Charleston, West Virginia Area" means Kanawha and Putnam Counties in West Virginia.

F. "Daily Newspaper" means a print publication which is published no fewer than five days per week and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

G. "Editorial Content" means the news, feature, and opinion content of, and the format, dress, makeup, and design of, a Daily Newspaper.

H. "Failing Firm" means a firm that has satisfied all of the conditions stated in the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines as applied by the Department of Justice and/or federal courts to newspapers published in a joint operating agreement under the Newspaper Preservation Act, 15 U.S.C. 1801–1804.

I. "Final Judgment" includes the following agreements attached as Exhibit A: Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings L.P.; Amended and Restated Operating Agreement of Daily Gazette Holding Company, LLC; Second Amended and Restated Joint Operating Agreement; the Put/Call Agreement; and the Charleston Newspapers Holdings L.P. Warrant to Purchase Class B Limited Partnership Units Initially Constituting a 20% Percentage Interest.

J. "Gazette Company" means defendant Daily Gazette Company, a privately-held corporation organized and existing under the laws of the State of West Virginia, with its principal place of business in Charleston, West Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their shareholders, directors, officers, managers, agents, and employees. Without limiting the foregoing, Gazette Company shall include Charleston Newspapers.

K. "Intellectual Property of the *Charleston Daily Mail*" includes the masthead, trademarks, copyrights, trade names, service names and service marks of the *Charleston Daily Mail;* its subscriber lists and advertiser lists; print and electronic archives; associated Web sites and URLs (including "dailymail.com"); and all legal rights associated with these assets.

L. "MediaNews Group" means defendant MediaNews Group, Inc., now known as Affiliated Media, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Denver, Colorado, its successors and assigns, and their shareholders, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. Without limiting the foregoing, MediaNews Group shall include Charleston Publishing Company.

M. "Person" means any natural person, corporate entity, partnership, joint venture, association, government entity, trust, or other business or legal entity, whether private or governmental.

N. "Publication" means all activities associated with the business of offering a Daily Newspaper to the public as a commercial endeavor, including but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such Daily Newspapers and selling advertisements and promotions therein.

O. "Relating to" or "Relates to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

P. "United States" means the Department of Justice, Antitrust Division.

Q. The terms "and" and "or" have both conjunctive and disjunctive meanings.

III. Applicability

This Final Judgment applies to Gazette Company and MediaNews Group, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required and Prohibited Conduct

A. (1) Within 5 business days after the entry of this Final Judgment, Gazette Company and MediaNews Group shall enter into, and abide by the terms of, the Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings L.P.; the Amended and Restated Operating Agreement of Daily Gazette Holding Company, LLC; the Second Amended and Restated Joint Operating Agreement; the Put/Call Agreement; and the Charleston Newspapers Holdings L.P. Warrant to Purchase Class B Limited Partnership Units Initially Constituting a 20% Percentage Interest, which are incorporated into this Final Judgment and attached hereto as Exhibit A. Gazette Company and MediaNews Group shall operate Charleston Newspapers, Charleston Newspapers Holdings L.P., the *Charleston Gazette* and the *Charleston Daily Mail* in accordance with the terms of the agreements in Exhibit A. No agreement in Exhibit A may be modified, amended, superseded or terminated without the prior written approval of the United States for the term of the Final Judgment. Upon entering into the contracts in Exhibit A, any existing agreements between Gazette Company and MediaNews Group relating to the Publication of any Daily Newspaper in Charleston, West Virginia, other than those contained in Exhibit A, shall be void and shall not be enforced thereafter. Except as expressly authorized by the agreements in Exhibit A, Gazette Company and MediaNews Group shall not directly or indirectly enter into any agreement subsequent to the entry of this Final Judgment that relates to the Publication of any Daily Newspaper in Charleston, West Virginia, other than agreements entered into with third parties in the ordinary course of business, without the prior written consent of the United States.

(2) Defendants shall not, without the prior written consent of the United States, pledge or otherwise offer as security or collateral, the assets comprising the Intellectual Property of the *Charleston Daily Mail,* in whole or in part, for credit or other consideration, to a greater extent than such assets were

pledged or offered as security or collateral as of December 11, 2009.

B. The *Charleston Daily Mail* shall continue to be published as a Daily Newspaper. The publication of the *Charleston Daily Mail* as a Daily Newspaper shall not be terminated unless it is a Failing Firm and the United States has given its prior written approval, which approval shall not be unreasonably withheld. Prior to receiving written approval from the United States to terminate publication of the *Charleston Daily Mail* as a Daily Newspaper, Gazette Company and MediaNews Group may not establish a termination date for the *Charleston Daily Mail.* Disputes regarding the application of the provisions of this Section IV(B) may be submitted to the Court for resolution.

C. If during the term of this Final Judgment the *Charleston Daily Mail* shall cease publication as a Daily Newspaper, or the operating agreement between Defendants governing Charleston Newspapers is dissolved or terminated, or Charleston Newspapers Holdings, L.P. is dissolved or terminated (collectively referred to as "Termination Events"), ownership of the Intellectual Property of the *Charleston Daily Mail* shall, after the prior satisfaction of the claims of all creditors of Charleston Newspapers Holdings, L.P. in accordance with the provisions of Section 7.3 of the Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings, L.P., immediately transfer to MediaNews Group at no cost. Within ninety days prior to the occurrence of any of the Termination Events, Gazette Company shall hire, subject to the approval of the United States, an appraiser experienced in the newspaper industry to perform an assessment of the fair market value, separately, of each asset comprising the Intellectual Property of the *Charleston Daily Mail.* To the extent the valuations determine that any assets comprising the Intellectual Property of the *Charleston Daily Mail* may be freely disposed of by Gazette Company under the terms of Section 7.8 of the United Bank Loan Agreement or the equivalent provision of any future credit agreement, Gazette Company shall transfer those assets to MediaNews Group (or its assignee) at no cost. In the event Gazette Company is unable to transfer immediately all or some of the assets comprising the Intellectual Property of the *Charleston Daily Mail* due to any security interest or lien held on those assets by any creditor, Gazette Company shall use its good faith efforts to (1) persuade any such creditor to release the security interest or lien on those assets; (2) assist any third party seeking such a release; or (3) transfer the assets as soon as possible in the next fiscal year (to the extent permissible under the United Bank Loan Agreement or any future credit agreement). Any assets that are released by the creditors shall be transferred to MediaNews Group (or its assignee) at no cost. In the event that the *Charleston Daily Mail's* print and electronic archives are not transferred to MediaNews Group, Charleston Newspapers will grant to MediaNews Group (or its assignee) a royalty-free license to use the *Charleston Daily Mail's* print and electronic archives for the sole purpose of continuing to publish the *Charleston Daily Mail* for so long as MediaNews Group (or its assignee) publishes the *Charleston Daily Mail* as a Daily Newspaper in Charleston. Except as expressly authorized by this Final Judgment, Gazette Company shall not directly or indirectly transfer to any other Person the ownership of some or all of the Intellectual Property of the *Charleston Daily Mail* without the prior written consent of the United States. If during the term of this Final Judgment the ownership of some or all of the Intellectual Property of the *Charleston Daily Mail* is transferred from Gazette Company to any other Person, Gazette Company shall not reacquire any part of the Intellectual Property of the *Charleston Daily Mail* during the term of this Final Judgment. Transfer of title to the Intellectual Property of the *Charleston Daily Mail* by Gazette Company shall be made free and clear of any liens or other encumbrances to the free transfer of title by the acquirer (including but not limited to rights of first refusal).

D. The Editorial Content of the *Charleston Daily Mail* shall be determined solely by MediaNews Group and the staff of the *Charleston Daily Mail.* The Editorial Content of the *Charleston Gazette* shall be determined solely by Gazette Company and the staff of the *Charleston Gazette.* Gazette Company shall not, directly or indirectly, take any action to influence the Editorial Content of the *Charleston Daily Mail,* nor shall MediaNews Group, directly or indirectly, take any action to influence the Editorial Content of the *Charleston Gazette.* Gazette Company and MediaNews Group shall not enter into any agreement limiting the separate and independent determination of the Editorial Content of their respective Daily Newspapers.

E. Gazette Company and MediaNews Group shall not take any action with the intent to cause the *Charleston Daily Mail* to become a Failing Firm. Neither Gazette Company nor MediaNews Group shall discriminate against, or cause Charleston Newspapers to discriminate against, the *Charleston Daily Mail* in performing circulation sales or advertising sales activities.

F. Commencing no later than thirty (30) days after the entry of this Final Judgment and continuing for a period of no less than six (6) months thereafter, Defendants shall cause Charleston Newspapers to offer the *Charleston Daily Mail* at a discount of no less than fifty (50) percent off the regular retail price to all new subscribers. Charleston Newspapers shall inform prospective new subscribers of this discount in any subscription solicitation efforts that it undertakes. During this period, Charleston Newspapers may not extend this same discount, or any greater discount, to subscribers of the *Charleston Gazette.*

V. Affidavits

Within sixty (60) calendar days of the entry of this Final Judgment in this matter, and every year thereafter until the expiration of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV of this Final Judgment. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

VI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, or determining whether to consent to any proposed agreement per Section IV(A), or whether to approve a termination of publication per Section IV(B), or whether to consent to any transfer per Section IV(C), and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and

documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, including the agreements of the parties attached hereto as Exhibit A, to modify any of their provisions, to enforce compliance, and to punish violations of their provisions.

VIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry. The expiration of this Final Judgment shall not automatically trigger the termination of the agreements contained in Exhibit A. After the expiration of this Final Judgment, the agreements contained in Exhibit A will be governed by their own terms.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Dated:

John T. Copenhaver, Jr.

United States District Judge

EXHIBIT A

AMENDED AND RESTATED

LIMITED PARTNERSHIP AGREEMENT

FOR

CHARLESTON NEWSPAPERS HOLDINGS, L.P.

A DELAWARE LIMITED PARTNERSHIP

_____, 2009

THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT is entered into as of _____, 2009 by and among Daily Gazette Holding Company, LLC, a Delaware limited liability company ("DGHC") and Charleston Publishing Company, a Delaware corporation ("CPC").

Recitals

Whereas, the Partnership was formed on May 7, 2004 in connection with the transactions contemplated by that certain Master Restructuring and Purchase Agreement (the "Master Restructuring Agreement") entered into on May 7, 2004, by Daily Gazette Company, MediaNews Group, Inc. (now known as Affiliated Media, Inc.) ("MNG"), CPC and the Joint Venture;

Whereas, the Partnership has managed and will, pursuant to the Second Amended and Restated Joint Venture Agreement dated as of even date herewith (the "JOA"), continue to manage the business and affairs of the Joint Venture; and

Whereas, DGHC and CPC desire to amend various provisions of the Limited Partnership Agreement dated May 7, 2004 (the "Prior Partnership Agreement"), by and among DGHC, CPC and ABRY/Charleston, Inc. to restate it in its entirety and to supplement it, as herein provided; *Now, therefore,* the parties agree as follows:

Article I

Definitions

1.1 *Definitions.* As used herein, the following terms shall have the following meanings:

1.1.1 *Act:* the Delaware Revised Uniform Limited Partnership Act, 6 Del. Code, as it may be amended from time to time, and any successor to such Act.

1.1.2 *Affiliate:* with respect to any Person, any other Person directly or indirectly controlling or controlled by such Person or under direct or indirect common control with such Person.

1.1.3 *Adjusted Capital Account:* with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant Fiscal Year or other period, after giving effect to the following adjustments:

(i) Crediting to such Capital Account any amounts that such Partner is obligated to restore to the Partnership pursuant to this Agreement or as otherwise described Treasury Regulations Section 1.704–1(b)(2)(ii)(*c*) or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704–2(g)(1) and 1.704–2(i)(5); and

(ii) Debiting from such Capital Account the items described in Treasury Regulations Sections 1.704–1(b)(2)(ii)(*d*)(*4*), 1.704–1(b)(2)(ii)(*d*)(*5*) and 1.704–1(b)(2)(ii)(*d*)(*6*).

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704–1(b)(2)(ii)(*d*) and shall be interpreted consistently therewith.

1.1.4 *Agreement:* this Amended and Restated Limited Partnership Agreement, as it may be amended from time to time.

1.1.5 *Capital Account:* with respect to any Partner, the account maintained for such Partner in accordance with the capital accounting rules of Section 704(b) of the Code and the provisions of Treasury Regulations Section 1.704–1(b)(2)(iv). Subject to any contrary requirements of the Code and the Treasury Regulations issued thereunder, each Partner's Capital Account shall equal (1)(i) the amount set forth as such Partner's capital account as of the date hereof as set forth on *Exhibit B;* (ii) the amount of money which has been contributed by that Partner to the

Partnership after the date hereof, if any; (ii) the fair market value, determined without regard to Code Section 7701(g) of the property, if any, which has been contributed by that Partner to the Partnership after the date hereof (net of any liabilities that are secured by such contributed property or that the Partnership or any other Partner is considered to assume under Code Section 752); (iii) allocations which have been made to that Partner of Net Profit and items of income and gain pursuant to Article V after the date hereof; and (iv) other additions which have been made in accordance with the Code after the date hereof, decreased by (2)(i) the amount of cash which has been distributed to that Partner by the Partnership after the date hereof; (ii) allocations which have been made to that Partner of Net Loss and items of loss and deduction pursuant to Article V after the date hereof; (iii) the fair market value, determined without regard to Code Section 7701(g), of any property which has been distributed to that Partner by the Partnership after the date hereof (net of any liabilities that are secured by such distributed property or that such Partner is considered to assume or take under Code Section 752); and (iv) other deductions which have been made in accordance with the Code after the date hereof.

1.1.6 *Capital Contribution:* with respect to any Partner, any cash or other property that such Partner has contributed to the capital of the Partnership pursuant to the terms of this Agreement.

1.1.7 *Certificate of Limited Partnership:* the certificate of limited partnership of the Partnership, as amended.

1.1.8 *Class A Limited Partner:* a Person owning Class A Limited Partner Units that has been admitted to the Partnership as a Limited Partner pursuant to the terms of this Agreement.

1.1.9 *Class A Limited Partnership Interest:* the Partnership Interest with respect to the Class A Limited Partner Units.

1.1.10 *Class A Limited Partner Unit:* any Partnership Unit having the rights and obligations specified in this Agreement with respect to a Class A Limited Partner Unit.

1.1.11 *Class B Limited Partner:* a Person owning Class B Limited Partner Units that has been admitted to the Partnership as a Limited Partner pursuant to the terms of this Agreement.

1.1.12 *Class B Limited Partner Unit:* any Partnership Unit having the rights and obligations specified in this Agreement with respect to a Class B Limited Partner Unit.

1.1.13 *Code:* the Internal Revenue Code of 1986, as amended.

1.1.14 *Depreciation:* with respect to each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be determined in the manner that is described in Treasury Regulations Section 1.704–1(b)(2)(iv)(*g*)(*3*) or Treasury Regulations Section 1.704–3(d)(2), as applicable.

1.1.15 *Fair Market Value of the Partnership:* has the meaning given such term in Section 5.2.3(b).

1.1.16 *Fiscal Year:* the calendar year or, in the case of the first and the last fiscal years, the fraction thereof commencing on the date on which the Partnership is formed under the Act or ending on the date on which the winding up of the Partnership is completed, as the case may be.

1.1.17 *General Partner:* DGHC and any successor General Partner.

1.1.18 *General Partner Unit:* any Partnership Unit having the rights and obligations specified in this Agreement with respect to a General Partner Unit.

1.1.19 *GP Board:* has the meaning given such term in Section 4.5.2.

1.1.20 *Gross Asset Value:* with respect to any asset, the asset's adjusted basis for Federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership after the date hereof shall be the gross fair market value of such asset as determined by the contributing Partner and the General Partner;

(ii) The Gross Asset Value of each Partnership asset shall be adjusted to equal its gross fair market value, as determined by the General Partner, as of the following times: (a) The acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Partnership to a Partner of more than a *de minimis* amount of Partnership property as consideration for an interest in the Partnership; and (c) the liquidation of the Partnership within the meaning of Treasury Regulations Section 1.704–1(b)(2)(ii)(*g*). However, the adjustments which are described in clauses (a) and (b) above shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;

(iii) The Gross Asset Value of any Partnership asset distributed to any Partner shall be adjusted to equal the gross fair market value of such asset on the date of distribution, as determined by the distributee Partner and the General Partner; and

(iv) The Gross Asset Value of each Partnership asset shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such asset pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704–1(b)(2)(iv)(*m*) and Section 5.3.8. However, Gross Asset Value shall not be adjusted pursuant to this clause (iv) to the extent that an adjustment pursuant to clause (ii) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to clauses (i), (ii) or (iv) of this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profit and Net Loss.

1.1.21 *Indemnified Person:* has the meaning given such term in Section 4.7.

1.1.22 *JOA:* has the meaning given such term in the Recitals to this Agreement, as such agreement may be amended from time to time.

1.1.23 *Joint Venture:* Charleston Newspapers, an unincorporated West Virginia joint venture.

1.1.24 *Limited Partner:* any Class A Limited Partner or Class B Limited Partner.

1.1.25 *Limited Partner Unit:* any Class A Limited Partner Unit or Class B Limited Partner Unit.

1.1.26 *Mail: The Charleston Daily Mail.*

1.1.27 *MNG:* has the meaning given such term in the Recitals to this Agreement, and includes any successor or assign.

1.1.28 *Net Cumulative Profit:* with respect to a Partner, an amount equal to the excess, if any, of (i) the aggregate Net Profits and items of income and gain allocated to such Partner pursuant to Article V for all Fiscal Years (or other periods) after the date hereof, over (ii) the aggregate Net Loss and items of loss and deduction allocated to such Partner pursuant to Article V for all Fiscal Years (or other periods) after the date hereof.

1.1.29 *Net Profit and Net Loss:* with respect to each Fiscal Year or other period, an amount which is equal to the Partnership's taxable income or loss for such year or period, as determined in

accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction that are required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Partnership that is exempt from Federal income tax and not otherwise taken into account in computing Net Profit or Net Loss shall be added to such taxable income or loss;

(ii) Any expenditures of the Partnership described in Code Section 705(a)(2)(B), or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704–1(b)(2)(iv)(*i*), and which are not otherwise taken into account in computing Net Profit or Net Loss, shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to clause (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profit or Net Loss;

(iv) Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization and other cost recovery deductions that are taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period;

(vi) Notwithstanding anything to the contrary that may be contained in the definition of the terms "Net Profit" and "Net Loss," any items that are specially allocated pursuant to Section 5.3 or 5.4 hereof shall be excluded in computing Net Profit or Net Loss; and

(vii) For purposes of this Agreement, any deduction for a loss on a sale or exchange of Partnership property which is disallowed to the Partnership under Code Section 267(a)(1) or 707(b) shall be treated as a Code Section 705(a)(2)(B) expenditure.

The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Section 5.3 or 5.4 shall be determined by applying rules analogous to those set forth in this definition of Net Profit and Net Loss.

1.1.30 *Newspapers: The Charleston Gazette, The Saturday Gazette-Mail, The Sunday Gazette-Mail* and the *Mail* collectively, and a "Newspaper" means any one of the Newspapers.

1.1.31 *Nonrecourse Deductions:* losses, deductions or Code Section 705(a)(2)(B) expenditures that are attributable to Nonrecourse Liabilities of the Partnership. The amount of Nonrecourse Deductions for a Fiscal Year shall be determined in accordance with Treasury Regulations Section 1.704–2(c).

1.1.32 *Nonrecourse Liability:* has the meaning set forth in Treasury Regulations Sections 1.704–2(b)(3) and 1.752–1(a)(2).

1.1.33 *Partner:* any of the General Partner and the Limited Partners individually, and "Partners" means each of the General Partner and the Limited Partners collectively.

1.1.34 *Partner Nonrecourse Debt:* has the meaning set forth in Treasury Regulations Section 1.704–2(b)(4).

1.1.35 *Partner Nonrecourse Debt Minimum Gain:* has the meaning set forth in Treasury Regulations Section 1.704–2(i)(2). The amount of Partner Nonrecourse Debt Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704–2(i)(3).

1.1.36 *Partner Nonrecourse Deductions:* losses, deductions or Code Section 705(a)(2)(B) expenditures that are attributable to Partner Nonrecourse Debt. The amount of Partner Nonrecourse Deductions for a Fiscal Year shall be determined in accordance with Treasury Regulations Section 1.704–2(i)(2).

1.1.37 *Partner Ratio Percentage:* with respect to any Class B Limited Partner, the percentage obtained by dividing the Percentage Interest of such Class B Limited Partner by the General Partner's Percentage Interest.

1.1.38 *Partnership:* Charleston Newspapers Holdings, L.P., a Delaware limited partnership.

1.1.39 *Partnership Interest:* means the entire ownership interest of a Partner in the Partnership at any particular time, including all of its rights and obligations hereunder and under the Act.

1.1.40 *Partnership Minimum Gain:* has the meaning set forth in Treasury Regulations Section 1.704–2(b)(2). The amount of Partnership Minimum Gain for a Fiscal Year shall be determined in accordance with Treasury Regulations Section 1.704–2(d).

1.1.41 *Percentage Interest:* with respect to any Class B Limited Partner and the General Partner, means the ratio of the number of Units held by such Partner divided by the total number of Class B Limited Partner Units and General Partner Units outstanding.

1.1.42 *Person:* means any individual, partnership, joint venture, association, corporation, trust, estate, limited liability company, limited liability partnership or any other legal entity.

1.1.43 *Put/Call Agreement:* a put/call agreement entered into by a Class B Limited Partner, DGHC and the Partnership in connection with the exercise by the Warrant Holder of its right to purchase Class B Limited Partner Units pursuant to the terms of the Warrant, in substantially the form attached to the Warrant as *Exhibit B* thereto.

1.1.44 *Regulatory Allocations:* has the meaning given such term in Section 5.4.

1.1.45 *Subsidiary:* means any Person (including the Joint Venture) that is controlled by the Partnership.

1.1.46 *Tax-Adjusted Percentage Interests:* with respect to any Class B Limited Partner, the percentage determined by dividing (i) such Class B Limited Partner's Percentage Interest by (ii) one (1) minus the Tax Rate; and with respect to the General Partner, the percentage determined as one (1) minus the Tax-Adjusted Percentage Interest of such Class B Limited Partner. By way of illustration, if such Class B Limited Partner's Percentage Interest is 6.42% and the Tax Rate is 40%, such Class B Limited Partner's Tax Adjusted Percentage Interest shall be 10.70% and the General Partner's Tax-Adjusted Percentage Interest shall be 89.30%.

1.1.47 *Tax Distributions:* distributions made pursuant to Section 5.1.2.

1.1.48 *Tax Gross-Up Amount:* has the meaning given such term in Section 5.2.3(a)(ii)(4).

1.1.49 *Tax Rate:* the highest effective combined rate of federal, state and local income and franchise tax applicable to corporations doing business in Charleston, West Virginia.

1.1.50 *Tax Shortfall:* has the meaning given such term in Section 5.1.2(b).

1.1.51 *Transfer:* has the meaning given to such term in Section 6.1.1.

1.1.52 *Transferee:* any Person that acquires a Partnership Interest from a Partner in accordance with the provisions of this Agreement.

1.1.53 *Treasury Regulations:* the Income Tax Regulations that have been promulgated under the Code, as such regulations may be amended from time to time.

1.1.54 *Unit:* an undivided share of the interests in the Partnership of all the

Partners, which include General Partner Units, Class A Limited Partner Units, and Class B Limited Partner Units, as set forth on *Exhibit A* attached hereto, as amended from time to time.

1.1.55 *Value of the Partnership's Business:* has the meaning given such term in Section 5.2.3.

1.1.56 *Warrant:* that certain warrant, dated as of even date herewith, granted to the Warrant Holder by the Partnership to purchase Class B Limited Partner Units.

1.1.57 *Warrant Holder:* CPC or any permitted transferee of the Warrant.

Article II

Formation of the Partnership

2.1 *Formation.* The Partnership was formed as a Delaware limited partnership pursuant to the terms of the Act and the Prior Partnership Agreement. The rights and liabilities of the Partners shall be determined pursuant to the Act and this Agreement. To the extent the rights or obligations of any Partner are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2 *Partners.* As of the date hereof, DGHC is the sole General Partner of the Partnership, CPC is the sole Class A Limited Partner of the Partnership and there is no Class B Limited Partner.

2.3 *Name.* The name of the Partnership is "Charleston Newspapers Holdings, L.P." The business of the Partnership may be conducted under that name or, upon compliance with applicable laws, any other name that the General Partner deems appropriate or advisable.

2.4 *Purpose.* The purposes of the Partnership shall be (i) to own, directly and indirectly, all the interests in the Joint Venture, (ii) to engage in the business, directly and indirectly, of owning, operating and managing newspaper properties, including managing the business and affairs of the Joint Venture in accordance with the JOA, (iii) to borrow or raise money, to guarantee the obligations of others, and to secure the payment thereof by mortgage upon or pledge of the whole or any part of the property of the Partnership, (iv) to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to securities or other assets held or owned by the Partnership, and (v) to do any act and thing and to enter into any contract incidental to, or necessary, proper or advisable for, the accomplishment of such purposes as determined by the General Partner in its sole discretion, including without limitation, entering into the JOA, the Warrant and a Put/Call Agreement and performing thereunder.

2.5 *Place of Business.* The principal place of business of the Partnership is c/o Daily Gazette Company, 1001 Virginia Street, East, Charleston, West Virginia 25301, subject to change by the General Partner upon notice to all Partners.

2.6 *Agent for Service of Process.* The agent of the Partnership for service of process in Delaware is the Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, subject to replacement from time to time by direction of the General Partner.

2.7 *Term.* The term of the Partnership commenced on the date the Certificate of Limited Partnership was filed with the Secretary of State of the State of Delaware, and shall continue until June 30, 2024, unless sooner terminated as provided in this Agreement.

2.8 *Tax Matters.* The parties acknowledge that for income tax purposes, the Partnership shall be treated as the continuation of the Joint Venture following the deemed merger of the Joint Venture and the Partnership.

Article III

Capital of the Partnership

3.1 *Transfers to Partnership.* DGHC and CPC each made the transfers to the Partnership specified on *Exhibit A* and received the Units specified in *Exhibit A.*

3.2 *Future Capital Contributions; Capital Assets.*

3.2.1 The Limited Partners shall have no obligation to make any further contributions to the capital of the Partnership, subject to CPC's obligation to reimburse the Joint Venture for any expenses paid by the Joint Venture on behalf of CPC in accordance with the provisions of the JOA.

3.2.2 DGHC shall in the future make such additional contributions to the capital of the Partnership as shall be necessary in its reasonable judgment to (1) fund acquisitions of capital assets necessary for the business and operations of the Partnership and/or the Joint Venture; (2) fund acquisitions of capital assets necessary for the business and operations of the editorial departments of each of the Newspapers to the extent such editorial departments' tangible capital assets on the date hereof require supplementation or replacement, (3) provide the Partnership and the Joint Venture with adequate working capital, and (4) ensure that the Partnership has adequate funds to make on a timely basis the cash distributions to CPC contemplated by Section V J (1) through (3) of the JOA, provided this is not intended to impose any greater obligation on the General Partner than is imposed on general partners generally under applicable law. The General Partner shall not have any personal liability for the repayment of the Capital Contributions of any other Partner; provided that the General Partner shall promptly return to the Partnership or to the Partner or Partners entitled thereto any distributions received by the General Partner in excess of those to which the General Partner is entitled under this Agreement.

3.3 *Interest on Capital Contributions.* No interest shall be paid by the Partnership on Capital Contributions.

3.4 *Liability Limited to Capital.* Except as otherwise provided under applicable law, the liability of a Limited Partner shall be limited to the total amount of Capital Contributions which such Limited Partner has made or is required to make pursuant to Section 3.1 hereof, and the Limited Partners shall have no further personal liability to contribute money to or in respect of the liabilities or obligations of the Partnership, nor shall the Limited Partners, as such, be personally liable for any obligation of the Partnership. A Limited Partner may, under certain circumstances, be required by law to return to the Partnership, for the benefit of the Partnership's creditors, amounts previously distributed. No Limited Partner shall be obligated by this Agreement to pay those distributions to or for the account of the Partnership or any creditor of the Partnership. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, a Limited Partner must return or pay over any part of those distributions, the obligation shall be that of such Limited Partner alone and not of any other Partner. Any payment returned to the Partnership by a Partner or made directly by a Partner to a creditor of the Partnership shall be deemed a Capital Contribution by such Partner.

3.5 *Withdrawal of Capital.* A Partner shall not be entitled to withdraw any part of its Capital Contribution or to receive any distribution from the Partnership, except as provided in this Agreement or the JOA.

Article IV

Management of the Partnership

4.1 *General Partner.* DGHC shall serve as the General Partner of the Partnership.

4.2 *Partnership Powers.* In furtherance of its purposes, the Partnership is hereby authorized to enter into any kind of lawful activity and to enter into, perform and carry out contracts of any kind in connection with the purposes of the Partnership.

4.3 *Authority, Responsibilities and Powers of General Partner.* Subject to Section 4.5.2 hereof, the General Partner shall have complete authority over and exclusive control and management of the business and affairs of the Partnership and all of the rights, powers and privileges of partners of a general partnership and of general partners of a limited partnership under the laws of the State of Delaware. The General Partner shall devote such time to the Partnership as it may reasonably deem to be required for the achievement of its purposes. In connection with such management, the General Partner (i) may delegate such general or specific authority to the officers and employees of the Partnership and its Affiliates with respect to the business and day-to-day operations of the Partnership and its Affiliates as it may from time to time consider desirable, and the officers and employees of the Partnership may exercise the authority granted to them, and (ii) may employ on behalf of the Partnership any other Persons to perform services for the Partnership, including Affiliates of any Partner.

4.4 *No Management Participation by any Limited Partner.* Subject to Section 4.5.2, no Limited Partner shall take part in, or at any time interfere in any manner with, the management, conduct or control of the business and operations of the Partnership, nor have any right or authority as such to act for or bind the Partnership in any manner whatsoever. No Partner shall have the power, right or authority to remove DGHC as the General Partner.

4.5 *Scope of Authority of the General Partner.*

4.5.1 Subject to Section 4.5.2 and 4.5.3 hereof, all decisions to be made on behalf of the Partnership shall be made by the General Partner and all actions to be taken or documents to be executed on behalf of the Partnership shall be taken and executed by the General Partner.

4.5.2 While the general authority to manage the day-to-day business and affairs of the General Partner shall be vested in its members, the management of the General Partner shall be delegated to a board of managers of the General Partner (the "GP Board") consisting of up to five individual managers appointed by Daily Gazette Company and in no event may the GP Board consist of more than five managers without the consent of the managers appointed pursuant to Section 5(b) of the Operating Agreement of DGHC by the Warrant Holder or the Class B Limited Partner(s), as applicable; provided, however, that in no event may the GP Board consist of more than five managers unless not fewer than forty percent (40%) are appointed by the Warrant Holder or the Class B Limited Partner(s), as applicable. Unless and until the Warrant Holder exercises its rights under the Warrant to purchase any Class B Limited Partner Units, Daily Gazette Company shall delegate its right to appoint two (2) of the members of the GP Board (or such greater number as required by Section 5(b)(ii) of the Operating Agreement of DGHC) to the Warrant Holder, and upon the purchase by the Warrant Holder of any Class B Limited Partner Units pursuant to the Warrant, Daily Gazette Company shall delegate its right to appoint two (2) of the members of the GP Board (or such greater number as required by Section 5(b)(ii) of the Operating Agreement of DGHC) to the Class B Limited Partner(s). If there is more than one Class B Limited Partner, then the right to appoint two (2) of the members of the GP Board (or such greater number as required by Section 5(b)(ii) of the Operating Agreement of DGHC) will be vested solely in the Class B Limited Partner that supervises editorial and reportorial functions of the *Mail* pursuant to Section 9.1 hereof. Neither the Warrant Holder nor the Class B Limited Partner(s) may appoint current employees of the Joint Venture, Daily Gazette Company, DGHC, the Partnership or Daily Gazette Publishing Company, LLC to represent it on the GP Board. The GP Board shall only have the power and authority to act by the vote of the constituent managers and no individual manager, in the capacity of manager, shall have the power or authority to bind the General Partner. Voting by the managers shall be on a per capita basis. Actions may be taken by the GP Board by, but only by, a majority vote of the managers; provided, however, that actions by the GP Board concerning (x) the budgeted Editorial Expenses (as that term is defined in the JOA) for The Charleston Gazette and the *Mail* or (y) "news hole" and color usage allocations for The Charleston Gazette and the *Mail* shall require the prior approval of at least 75% of the managers of the GP Board (*i.e.,* if the GP Board consists of four managers, not fewer than three managers must vote in favor of the particular action, and if the GP Board consists of five managers, not fewer than four managers must vote in favor of the particular action). Either Daily Gazette Company or, as applicable, the Warrant Holder or the Class B Limited Partner(s) may at any time, by written notice to the other, remove its managers, with or without cause, and substitute managers to serve in their stead. No manager shall be removed from office, with or without cause, without the consent of the Person that designated him. Each member of the GP Board appointed by the Warrant Holder or the Class B Limited Partner(s) may act (or refrain from acting), and the Warrant Holder or the Class B Limited Partner(s) may instruct such members of the GP Board, in their capacity as such, to act (or refrain from acting) solely according to the interests (or the perceived interests) of the Warrant Holder or the Class B Limited Partner(s) and none of the foregoing shall be deemed to breach any fiduciary duty that, pursuant to this Agreement or at law or in equity, the Warrant Holder or the Class B Limited Partner(s) otherwise would be deemed to have to the Partnership, the General Partner or Daily Gazette Company. The GP Board shall hold such meetings no less frequently than once per calendar quarter and at such times and places as shall be determined by the members of the GP Board. Special meetings of the GP Board may be called at any time by agreement of the members of the GP Board. The GP Board may establish such procedures for the conduct of meetings as may be agreed by the members of the GP Board.

4.5.3 Without the written consent of the Limited Partners, or except as specifically authorized in this Agreement, the General Partner may not:

(a) Do any act in contravention of this Agreement, the JOA or the Certificate of Limited Partnership.

(b) Do any act that would make it impossible to carry on the ordinary business of the Partnership.

(c) Change the purposes of the Partnership as set forth in Section 2.4 hereof.

(d) Dissolve the Partnership.

(e) Make any disposition of assets contributed by CPC to the Partnership on the date of the Prior Partnership Agreement that would impair the ability of the Partnership to make the terminating distributions to CPC that are contemplated by Section 7.3 hereof (provided no consent of the Limited

Partners will be required for any disposition of such assets pursuant to any foreclosure action of the Joint Venture's lenders).

4.6 *Liability.* If any provision herein shall, under applicable law, subject any Limited Partner to liability as a general partner of the Partnership, such provision shall be deemed suspended and of no force and effect until such time as the effectiveness of such provision does not subject such Limited Partner to such liability.

4.7 *Indemnification.* The Partnership shall indemnify the General Partner and its Affiliates and the employees, officers, directors, each member of the GP Board, shareholders, partners, members and agents of such Persons (each an "Indemnified Person") and shall defend and hold the Indemnified Persons harmless from any claim, demand, judgment, cost or expense (including attorneys' fees, which shall be paid as incurred) arising out of or related to any act or omission by such Indemnified Persons on behalf of the Partnership, except for any act or omission which is finally adjudicated to have constituted willful misconduct on the part of such Indemnified Person. In no event shall any Indemnified Person be liable to the Partnership or to any other Partner, except for conduct which is finally adjudicated to have constituted willful misconduct on the part of such Indemnified Person. Any Person who is within the definition of "Indemnified Person" at the time of any act or omission shall be entitled to the benefits of this Section 4.7 as an "Indemnified Person" regardless of whether such Person continues to be within the definition of "Indemnified Person" at the time of his or its claim for indemnification or exculpation hereunder.

4.8 *Partnership Expenses.* The Partnership shall pay for all necessary and reasonable direct expenses of the Partnership.

4.9 *Other Ventures.* Subject to the terms of the JOA, neither Daily Gazette Company, nor any Partner, may engage in other ventures in the Charleston, West Virginia market that are competitive with that of the Partnership or any of its Subsidiaries. For purposes of this Section 4.9, any competitive venture undertaken by an Affiliate of a Partner in the Charleston, West Virginia market will be deemed to be a competitive venture undertaken by such Partner and a breach of this Agreement by such Partner.

Article V

Distributions and Allocations

5.1 *Distributions.*

5.1.1 *Distributions to Class A Limited Partner.* With respect to each Fiscal Year that the Class A Limited Partner produces editorial and news copy for the *Mail*, the General Partner shall cause the Partnership to distribute cash to the Class A Limited Partner in an amount equal to the cash received by the Partnership with respect to its interest in the Joint Venture, pursuant to and subject to the terms of paragraphs (1), (2) and (3) of Section V J of the JOA. Such cash shall be distributed by the Partnership to the Class A Limited Partner as soon as reasonably practicable following its receipt by the Partnership.

5.1.2 *Tax Distributions.*

(a) During each Fiscal Year, the General Partner shall cause the Partnership to distribute cash to the Class B Limited Partner(s) and to the General Partner in an amount equal to the excess, if any, of (i) the product of (1) the Net Cumulative Profit allocated to such Partner and (2) the Tax Rate with respect to such Fiscal Year, over (ii) the aggregate distributions to such Partner after the date hereof pursuant to Section 5.1.4 and this Section 5.1.2 (such excess being such Partner's "Tax Shortfall"). For purposes of this Section 5.1.2(a), distributions made within 120 days of the end of any Fiscal Year may be designated by the General Partner as Tax Distributions with respect to such Fiscal Year and shall be treated for purposes of this Section 5.1.2(a) as having been made during such Fiscal Year.

(b) If the aggregate amount to be distributed by the Partnership pursuant to Section 5.1.2(a) is less than the aggregate amount of the Tax Shortfall for all Partners, then the amount to be distributed will be distributed among the Partners pro rata in accordance with the amounts of their respective Tax Shortfalls.

5.1.3 *Distributions to General Partner.* With respect to a Fiscal Year, after the distributions required by Sections 5.1.1 and 5.1.2, the General Partner shall cause the Partnership to distribute cash in an amount not to exceed $650,000 to the General Partner. The distributions provided in this Section 5.1.3 shall be made only to the extent such distributions are not prohibited by the Partnership's credit agreements or other agreements to which the Partnership is a party.

5.1.4 *Other Cash Distributions.* During a Fiscal Year, after the distributions required by Sections 5.1.1, 5.1.2 and 5.1.3, the General Partner may cause the Partnership to distribute additional cash at such times and in such amounts as the General Partner may determine to be appropriate in its sole discretion, in the following order and priority:

(a) If the product of the Partner Ratio Percentage of any Class B Limited Partner and the sum of all distributions to the General Partner pursuant to Section 5.1.2 is greater than the sum of all distributions to such Class B Limited Partner pursuant to Section 5.1.2, cash shall be distributed to such Class B Limited Partner in the amount of such excess;

(b) If the sum of all distributions to any Class B Limited Partner pursuant to Section 5.1.2 is greater than the product of Partner Ratio Percentage of such Class B Limited Partner and the sum of all distributions to the General Partner pursuant to Section 5.1.2, cash shall be distributed to the General Partner in the amount of such excess;

(c) Thereafter, cash shall be distributed to the Class B Limited Partner(s) and the General Partner pro rata in accordance with their Capital Account balances until such Capital Account balances are zero; and

(d) Any additional cash shall be distributed to the Class B Limited Partner(s) and the General Partner in accordance with their Percentage Interests.

5.1.5 *Withholding.* Any amount that has been withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment or distribution to the Partnership or the Partners shall be treated as an amount which was distributed to a Partner pursuant to Section 5.1 hereof for all purposes of this Agreement.

5.2 *Allocations of Net Profit and Net Loss.*

5.2.1 *Net Profit.* Except as otherwise provided in this Agreement, Net Profit of the Partnership for each Fiscal Year shall be allocated as follows:

(a) first, Net Profit shall be allocated so as to offset any Net Loss allocated to the General Partner pursuant to Section 5.2.2(c);

(b) second, Net Profit shall be allocated to the Class B Limited Partner(s) and to the General Partner so as to offset any Net Loss allocated to them pursuant to Section 5.2.2(b), pro rata in proportion to the amount of Net Loss to be offset; and

(c) thereafter, Net Profit shall be allocated to the Class B Limited Partner(s) and the General Partner in accordance with their Tax-Adjusted Percentage Interests.

5.2.2 *Net Loss.* Except as otherwise provided in this Agreement, Net Loss of the Partnership for each Fiscal Year shall be allocated as follows:

(a) first, Net Loss shall be allocated to the Class B Limited Partner(s) and to the General Partner so as to offset any Net Profit allocated to them pursuant to Section 5.2.1(c) (to the extent not distributed pursuant to Section 5.1), pro rata in proportion to the amount of Net Profit to be offset.

(b) second, Net Loss shall be allocated to the Class B Limited Partner(s) and the General Partner in accordance with their Percentage Interests until the Class B Limited Partner's or Partners' Adjusted Capital Account balance is zero; and

(c) thereafter, all remaining Net Loss shall be allocated to the General Partner.

5.2.3 *Allocations of Net Profit and Net Loss Following Dissolution.*

(a) Notwithstanding Sections 5.2.1 and 5.2.2, following the dissolution of the Partnership pursuant to Article VII, beginning in the Fiscal Year in which such dissolution occurs or beginning in any Fiscal Year prior to the Fiscal Year in which such dissolution occurs if the Partnership's Federal income tax return for such prior Fiscal Year has not yet been required to be filed (not including extensions), items of income, gain, loss and deduction described in clause (iii) of Section 1.1.29 that are attributable to the adjustment to the Gross Asset Value of assets distributed in kind to the Class A Limited Partner pursuant to Section 7.3.2 (if any) shall be allocated to the Class A Limited Partner, and thereafter, all remaining items of income, gain, loss and deduction shall be allocated among the Partners so as to cause the credit balance in each Partner's Capital Account to equal the amount of distributions such Partner would be entitled to receive if the Partnership were to distribute an amount equal to the aggregate credit balances in all Partners' Capital Accounts (after such allocations of income and gain, loss and deduction) in accordance with the following:

(i) First, the Partnership would distribute to the Class A Limited Partner cash in an amount equal to the aggregate cash distributed to the Partnership pursuant to clause (2)(a) of Section VI B of the JOA;

(ii) Second, the Partnership would distribute to each Class B Limited Partner cash in an amount equal to the following:

(1) the product of such Class B Limited Partner's Percentage Interest and the Fair Market Value of the Partnership; *plus*

(2) the excess (only if such amount is greater than zero) of (A) the product of such Class B Limited Partner's Partner Ratio Percentage and the sum of all distributions to the General Partner pursuant to Section 5.1.2 over (B) the sum of all distributions to such Class B Limited Partner pursuant to Section 5.1.2; *less*

(3) the excess (only if such amount is greater than zero) of (A) the sum of all distributions to such Class B Limited Partner pursuant to Section 5.1.2 over (B) the product of such Class B Limited Partner's Partner Ratio Percentage and the sum of all distributions to the General Partner pursuant to Section 5.1.2; *plus*

(4) an amount equal to the excess, if any, of (A) the quotient obtained by dividing Net Cumulative Profits allocated to such Class B Limited Partner by one (1) minus the Tax Rate then in effect, over (B) Net Cumulative Profits allocated to such Class B Limited Partner (such amount being the "Tax Gross-Up Amount").

(iii) Thereafter, the Partnership would distribute all remaining cash and other assets of the Partnership to the General Partner.

(b) For purposes of this Section 5.2.3, the "Fair Market Value of the Partnership" shall equal:

(i) the Value of the Partnership's Business, *plus*

(ii) any current assets of the Partnership, calculated as of the date of dissolution, as defined and determined in accordance with generally accepted accounting principles, *less*

(iii) the sum of $2,448,300 (which the parties agree shall represent the amount of the unfunded accrued benefit obligation for the Charleston Newspapers Retirement Benefit Plan as of the date of dissolution), and $506,731 (which the parties agree shall represent the amount of the unfunded accrued benefit obligation for the Charleston Newspapers Post Retirement Medical Benefit Program as of the date of dissolution), *less*

(iv) any debts and liabilities of the Partnership and reserves for unmatured, contingent or unforeseen liabilities of the Partnership (other than unfunded obligations under the Charleston Newspapers Retirement Benefit Plan and Post-Retirement Medical Benefit Program), calculated as of the date of dissolution, as defined and determined in accordance with Section 7.3 and generally accepted accounting principles, *less*

(v) the costs of an investment banking firm or appraisal firm or firms selected to determined the Fair Market Value of the Partnership, *less*

(vi) the amount determined in Sections 5.2.3(a)(ii)(2) and 5.2.3(a)(ii)(3), if any. The "Value of the Partnership's Business" shall be the going concern value of the Partnership as of the date of dissolution as determined by mutual agreement of the General Partner and the Class B Limited Partner(s) or by appraisals in accordance with this Section 5.2.3. In determining the Value of the Partnership's Business, the General Partner and the Class B Limited Partner(s), or the appraisers selected to determine the Fair Market Value of the Partnership, as the case may be, (1) shall assume that the value of any business is the cash price at which the assets of such business as a going concern would change hands between a willing buyer and a willing seller (neither acting under compulsion) in an arms-length transaction, on terms and subject to conditions and costs applicable in the newspaper publishing industry, (2) shall assume that all assets used in the operation of the business of the Partnership and its Subsidiaries, whether owned by or licensed to the Partnership or any of its Subsidiaries (and all other assets of any Affiliate of the Partnership that are used by the Partnership or any of its Subsidiaries), were entirely owned directly by the Partnership, (3) shall not take into account expenditures in respect of any management agreements entered into by the Joint Venture. In the event the General Partner and the Class B Limited Partner(s) do not agree on the Fair Market Value of the Partnership within twenty days, then within fifteen days of the expiration of such twenty day period (or such longer period as the General Partner and the Class B Limited Partner(s) mutually agree), each of the General Partner and the Class B Limited Partner(s) shall select a nationally recognized appraiser with experience in the newspaper industry to prepare, using the methodology described in this paragraph, a written appraisal setting forth such appraiser's determination of the Fair Market Value of the Partnership. If either the General Partner and the Class B Limited Partner(s) fail to so appoint an appraiser within such fifteen day period, then its right to do so shall lapse and the appraisal made by the one appraiser who is timely appointed shall be the Fair Market Value of the Partnership. If two appraisals are made, unless the higher of the two appraisals is more than 110% more than the lower appraisal, the Fair Market Value of the Partnership will be the average of the two appraisals, and if the higher of the two appraisals is more than 110% more than the lower of the appraisals, the General Partner and the Class B Limited Partner(s) shall jointly

select a third appraiser, and the Fair Market Value will be the average of the two of the three appraisals that are closest together in amount. All appraisals will be made within twenty days of appointment of such appraiser and must separately identify the amount of each of the items described in clauses (i) through (vi) of Section 5.2.3(b). A written notice of the results of each such appraisal shall be given to the General Partner and the Class B Limited Partner(s). The General Partner and the Class B Limited Partner(s) will each pay the fees of the appraiser selected by it, and the General Partner and the Class B Limited Partner(s) will share equally the fees of the third appraiser, if any. The General Partner and each Member will cooperate fully with each appraiser's attempt to determine the Fair Market Value of the Partnership.

5.3 *Special Allocations.*

5.3.1 *Limited Partners.*

(a) The Partnership shall specially allocate to the Class A Limited Partner (in its capacity as such) items of Partnership income for each Fiscal Year in an amount equal to the cash distributed to the Class A Limited Partner (in its capacity as such) pursuant to Section 5.1.1. Notwithstanding any other provisions of this Agreement, except Section 5.2.3 and this Section 5.3.1, no other items of income, gain, loss or deduction shall be allocated to the Class A Limited Partner (in its capacity as such).

(b) The Partnership shall specially allocate to the General Partner items of Partnership income and gain in the amount of $650,000 for each Fiscal Year.

5.3.2 *Minimum Gain Chargeback.* Notwithstanding any other provision of this Article V to the contrary, if there is a net decrease in Partnership Minimum Gain for any Fiscal Year, each of the General Partner and each Class B Limited Partner shall be specially allocated items of Partnership income and gain for such Fiscal Year (and if necessary, for succeeding Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain as determined in accordance with Treasury Regulations Section 1.704–2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. However, this Section 5.3.2 shall not apply to the extent that the circumstances which are described in Treasury Regulations Sections 1.704–2(f)(2), 1.704–2(f)(3), 1.704–2(f)(4) or 1.704–2(0(5) exist. The items of Partnership income and gain that are to be allocated pursuant to this Section 5.3.2 shall be determined in accordance with Treasury Regulations Sections 1.704–2(f)(6) and 1.704–2(j)(2). This Section 5.3.2 is intended to comply with the minimum gain chargeback requirement of Treasury Regulations Section 1.704–2(f) and shall be interpreted consistently therewith.

5.3.3 *Partner Minimum Gain Chargeback.* Notwithstanding any other provision of this Article V, except Section 5.3.2, to the contrary, if, during any Fiscal Year, there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt, each of the General Partner and each Class B Limited Partner with a share of that Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt (as determined in accordance with Treasury Regulations Section 1.704–2(i)(5)) as of the beginning of such Fiscal Year shall be specially allocated items of Partnership income and gain for the Fiscal Year (and, if necessary, for succeeding Fiscal Years) in an amount equal to such Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt in accordance with Treasury Regulations Section 1.704–2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items of Company income and gain to be allocated pursuant to this Section 5.3.3 shall be determined in accordance with Treasury Regulations Sections 1.704–2(i)(4) and 1.704–2(j)(2). This Section 5.3.3 is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704–2(i)(4) and shall be interpreted consistently therewith.

5.3.4 *Qualified Income Offset.* In the event that any Partner unexpectedly receives any of the adjustments, allocations or distributions described in Treasury Regulations Section 1.704–1(b)(2)(ii)(d)(4), 1.704–1(b)(2)(ii)(d)(5) or 1.704–1(b) (2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any deficit balance of such Partner's Adjusted Capital Account as quickly as possible. However, an allocation shall be made pursuant to this Section 5.3.4 if, and only to the extent that, such Partner would have a deficit balance in its Adjusted Capital Account after all of the other allocations that are provided for in this Article V have been tentatively made as if this Section 5.3.4 were not a part of this Agreement.

5.3.5 *Gross Income Allocation.* In the event that any Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Partner is obligated to restore to the Partnership pursuant to this Agreement or as otherwise described in Treasury Regulations Section 1.704–1(b)(2)(ii)(c), (ii) the amount such Partner is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704–2(g)(1) and (iii) the amount such Partner is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704–2(i)(5), such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible. However, an allocation shall be made pursuant to this Section 5.3.5 if, and only to the extent that such Partner would have a deficit Capital Account in excess of such sum after all of the other allocations that are provided for in this Article V have been tentatively made as if Section 5.3.4 and this Section 5.3.5 were not a part of this Agreement.

5.3.6 *Nonrecourse Deductions.* Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the General Partner.

5.3.7 *Partner Nonrecourse Deductions.* Any Partner Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704–2(i).

5.3.8 *Section 754 Adjustment.*

(a) To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or 743(b) is required pursuant to Treasury Regulations Section 1.704–1(b)(2)(iv)(*m*)(*4*) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's Partnership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profit and Net Loss.

(b) To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations

Section 1.704–1(b)(2)(iv)(*m*)(*2*) or 1.704–1(b)(2)(iv)(*m*)(*4*), to be taken into account in determining Capital Accounts as the result of a distribution to a Partner in complete liquidation of its interest, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of the asset and shall be specially allocated to the Partners as Net Profit or Net Loss in the event Treasury Regulations Section 1.704–1(b)(2)(iv)(*m*)(*2*) applies, or to the Partner to whom such distribution is made in the event Treasury Regulations Section 1.704–1(b)(2)(iv)(*m*)(*4*) applies.

5.4 *Curative Allocations.* The allocations set forth in Sections 5.3.2, 5.3.3, 5.3.4, 5.3.5, 5.3.6, 5.3.7 and 5.3.8 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of income, gain, loss, or deduction pursuant to this Section 5.4. Therefore, notwithstanding any other provision of this Article V (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not in this Agreement. In exercising its discretion under this Section 5.4, the General Partner shall take into account future Regulatory Allocations under Sections 5.3.2 and 5.3.3 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 5.3.6 and 5.3.7.

5.5 *Tax Allocations; Code Section 704(c).*

5.5.1 Except as otherwise provided in this Section 5.5, each item of income, gain, loss and deduction of the Partnership recognized for income tax purposes shall be allocated to the Partners in accordance with the allocation of the corresponding "book" items pursuant to Sections 5.2, 5.3 and 5.4.

5.5.2 In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for Federal income tax purposes and its initial Gross Asset Value in accordance with Code Section 704(c) and the Treasury Regulations thereunder, provided, however, that no such Section 704(c) allocations shall be made to the Class A Limited Partner (in its capacity as such).

5.5.3 In the event that the Gross Asset Value of any Partnership asset is adjusted pursuant to clause (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for Federal income tax purposes and its Gross Asset Value in accordance with Code Section 704(c) and the Treasury Regulations thereunder, provided, however, that no such Section 704(c) allocations shall be made to the Class A Limited Partner (in its capacity as such).

5.5.4 Any elections or other decisions relating to such allocations shall be made by the Tax Matters Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations that are made pursuant to this Section 5.5 are made solely for purposes of Federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Net Profit, Net Loss or other items or distributions pursuant to any provision of this Agreement.

5.6 *Allocation in Event of Transfer.* If a Partnership Interest is Transferred in accordance with Article VI of this Agreement, the Net Profit and Net Loss of the Partnership shall be calculated as of the end of the month immediately prior to the month in which the transfer is effective. The transferor Partner shall be allocated an amount which is equal to the Net Profit and Net Loss of the Partnership that is allocable to the period ending on the last day of the month immediately prior to the Transfer. The Transferee shall be allocated an amount which is equal to the Net Profit and Net Loss of the Partnership that is allocable to the remainder of the calendar year. As of the effective date of such Transfer, the Transferee shall succeed to the Capital Account of the transferor Partner with respect to the Transferred Partnership Interest. This Section 5.6 shall apply for purposes of computing a Partner's Capital Account and for Federal income tax purposes.

Article VI

Transfer of Partnership Interests

6.1 *Limitations on Transfers.*

6.1.1 Except as provided in Section 6.1.2, no sale, assignment, transfer, pledge, hypothecation or other disposition (any or all of the foregoing, a "Transfer") of a Partnership Interest will be effective nor will any purported Transferee become a Partner or otherwise be entitled to any of the attributes of ownership of the Partnership purportedly Transferred.

6.1.2 The restrictions of Section 6.1.1 shall not apply to:

(a) a Transfer pursuant to Article VII;

(b) in the case of the Class A Limited Partner, a Transfer of its entire Class A Limited Partnership Interest approved by the General Partner, which approval shall not be unreasonably withheld (the Class A Limited Partner acknowledges and agrees that the General Partner's ability to grant consent to a Transfer is circumscribed by certain contractual restrictions under the Joint Venture's financing arrangements and the withholding of consent by the General Partner in order to comply with these contractual restrictions will not be considered unreasonable);

(c) in the case of a Class B Limited Partner, a Transfer permitted by and made in accordance with the provisions of the Put/Call Agreement to which such Class B Limited Partner is a party;

(d) in the case of the General Partner or any permitted Transferee of the General Partner, any Transfer to an Affiliate of the General Partner and any other Transfer so long as at the time of such Transfer the Joint Venture is current in the distributions and payments required to be made to the Class A Limited Partner pursuant to Section V J(l) through (4) of the JOA, and provided that if the Joint Venture is not so current, the General Partner shall obtain the consent of the Class A Limited Partner prior to any Transfer pursuant to this Section 6.1.2(d);

(e) a Transfer pursuant to a foreclosure action by the Joint Venture's lenders; or

(f) any Transfer of all or any portion of the ownership interests in the Class A Limited Partnership Interest or the Partnership Interest with respect to any of the Class B Limited Partner Units to MNG or an Affiliate of MNG so long as (1) all of the other requirements of this Article VI have been complied with and (2) MNG or an Affiliate of MNG holds and maintains, directly or indirectly, voting control of such Transferee following such Transfer.

6.2 *Transferees.*

6.2.1 Notwithstanding any provision to the contrary contained herein, no Partnership Interest may be transferred unless such Transfer is made in accordance with the provisions of this Article VI and the transferor and the Transferee have complied with the following conditions:

(a) the transferor has executed and delivered to the General Partner a copy of the assignment of the Partnership Interest to Transferee in form and substance reasonably satisfactory to the General Partner; and

(b) the Transferee, if not already a party to this Agreement, becomes a party to this Agreement, assumes all of the obligations hereunder of its transferor in respect of such Partnership Interest and agrees to be bound by the terms and conditions hereof in the same manner as the transferor.

6.2.2 Upon compliance with Section 6.1 and 6.2.1, any Transferee shall be substituted as a Partner for, and shall enjoy the same rights and be subject to the same obligations as, its predecessor as a Partner hereunder, and the General Partner shall prepare and file as soon as practicable, if required by law, an amendment to the Certificate of Limited Partnership and any other qualification documents. *Exhibit A* hereto shall also be amended to reflect such Transfer.

6.2.3 If there is a permitted Transfer of a Partnership Interest under this Agreement:

(a) In the case of a Transfer by any Partner, such Partner shall, upon the effectiveness of such Transfer, be released and discharged from any further liability under this Agreement in respect of such Partnership Interest, provided, however, that such transferring Partner shall remain liable to the Partnership for any Partnership distributions wrongfully paid to or received by such transferring Partner or that are required by law to be returned to the Partnership; and

(b) If requested to do so by any transferring Partner or by the Transferee by notice given to the Partners, the Partnership shall make an election under Section 754 of the Code (and a corresponding election under applicable state and local law). Upon the request of any Partner, the Partnership shall also make a timely election under Section 754 of the Code upon a distribution of property or money to a Partner.

6.3 *Transfers of Interests in Partners.*

6.3.1 The transfer of a majority of the issued and outstanding capital stock (or equivalent interest) of a Partner or a controlling interest of a Partner, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, and whether directly or by transfer of stock (or equivalent interest) of a direct or indirect parent corporation or other entity or otherwise, shall be deemed to be a purported Transfer of an interest in the Partnership for purposes of this Agreement.

6.3.2 Except as provided in Section 6.3.3, MNG agrees that it will not Transfer (whether voluntarily, involuntarily or by operation of law) all or any part of its ownership interest in the Class A Limited Partner, without the consent of the General Partner, which consent shall not be unreasonably withheld (MNG acknowledges and agrees that the General Partner's ability to grant consent to a Transfer is circumscribed by certain contractual restrictions under the Joint Venture's financing arrangements, and the withholding of consent by the General Partner in order to comply with these contractual restrictions will not be considered unreasonable).

6.3.3 The restriction of Section 6.3.1 shall not apply and no consent of the General Partner shall be required for (x) a Transfer directly or indirectly by MNG or CPC of its ownership interests in the Class A Limited Partner or any Class B Limited Partner to an Affiliate of MNG so long as (1) all of the other requirements of this Article VI have been complied with and (2) MNG or a MNG Affiliate holds and maintains, directly or indirectly, voting control of such Transferee following such Transfer, and (y) the grant of a security interest in the ownership interests in the Class A Limited Partner or any Class B Limited Partner.

6.4 *Other Consents and Requirements.* Any Transfer must be in compliance with all requirements imposed by any state securities administrator having jurisdiction over the Transfer and the United States Securities and Exchange Commission.

6.5 *Assignment Not in Compliance.* Any Transfer in contravention of any of the provisions of this Article VI (whether voluntarily, involuntarily or by operation of law) shall be void and of no effect, and shall neither bind nor be recognized by the Partnership.

6.6 *Pledge.* Each Partner and any permitted Transferee of each Partner may collaterally assign its Partnership Interest and its attendant rights under this Agreement to the Joint Venture's lenders for security purposes. Each Limited Partner may at any time assign its Partnership Interest and its rights under this Agreement as collateral security to Persons extending financing to such Limited Partner or any of its Affiliates (and such Persons may at any time foreclose on such security interest).

6.7 *Division of Partnership Interests.* The several rights and obligations inherent in the Capital Account and Partnership Interest are indivisible except in equal proportions, such that the assignment of a specified percentage of a Partner's Partnership Interest may only represent an equal percentage of the total Capital Account that was attributable to such Partner's Partnership Interest prior to the assignment.

6.8 *Withdrawal of Partners.* No Partner may withdraw from the Partnership except upon the transfer of its Partnership Interest permitted under the provisions of this Agreement or upon the dissolution and winding up of the Partnership in accordance with the provisions of Article VII. For purposes of this Agreement, the term "withdrawal" does not include the happening of any event described in Section 17–402(a)(4) or (5) of the Act, and no Partner shall cease to be a Partner solely upon the happening of such event(s). The withdrawal of a Partner shall not alter the allocations and distributions to be made to the Partners pursuant to this Agreement.

6.9 *Issuance of Partnership Interests.* Subject to the provisions of any Put/Call Agreement, the General Partner may cause the Partnership to issue additional Partnership Interests to any Person and may admit to the Partnership as additional Partners the Person acquiring such Partnership Interests, if such Persons were not previously admitted as Partners. The Persons acquiring such Partnership Interests shall have the rights and be subject to the obligations set forth in this Agreement as it may be amended in accordance with Section 9.8 in connection therewith. A Person admitted as a new Partner shall only be entitled to distributions and allocations of Net Profit and Net Loss attributable to the period beginning on the effective date of its admission to the Partnership, and the Partnership shall attribute Net Profit and Net Loss to the period before the effective date of the admission of a new Partner and to the period beginning on the effective date of the admission of a new Partner by the closing of the books method. The Partnership will not issue any additional Class A Limited Partner Units to any other Person without the consent of the Class A Limited Partner and will not issue Class B Limited Partner Units to any other Person without the consent of the holders of the majority of the Class B Limited Partner Units.

Article VII

Dissolution and Liquidation

7.1 *Events of Dissolution.* The Partnership shall be dissolved, terminated and liquidated upon the happening of any of the following events:

(a) the expiration of the term of the Partnership as set forth in Section 2.7;

(b) at such time as the JOA shall expire or otherwise terminate;

(c) upon mutual agreement of the Partners; or subject to any provision of this Agreement that limits or prevents dissolution, the happening of any event that, under applicable law, causes the dissolution of a limited partnership.

7.2 *Liquidation.* Upon dissolution of the Partnership for any reason, the Partnership shall immediately commence to wind up its affairs in accordance with this Article VII. A reasonable period of time shall be allowed for the orderly termination of the Partnership's business, discharge of its liabilities, and distribution or liquidation of the remaining assets so as to enable the Partnership to minimize the normal losses attendant to the liquidation process. The dissolution and liquidation of the Partnership shall be conducted and supervised by the General Partner, who is hereby authorized and empowered to execute on behalf of the Partnership any and all documents necessary or desirable to effectuate the dissolution and liquidation of the Partnership and the transfer of any property of the Partnership.

7.3 *Priority on Liquidation.* The General Partner shall, to the extent feasible, liquidate and/or distribute the assets of the Partnership as promptly as shall be practicable consistent with the other provisions hereof. Such assets, or the proceeds of such liquidation, shall be applied as follows:

7.3.1 first, to the payment of the debts and liabilities of the Partnership, in the order of priority provided by law (excluding any loans by any Partner to the Partnership);

7.3.2 second, the Partnership shall distribute to the Class A Limited Partner the *Mail* masthead, all trademarks, copyrights, trade names, service names and service marks of the *Mail,* subscriber and advertiser lists, print and electronic archives of the *Mail,* associated Websites and URLs (including "dailymail.com") and all legal rights associated with these assets, subject to such dispositions, additions or substitutions relating thereto which may have occurred in the ordinary course of the operations of the Partnership or the Joint Venture subsequent to the date hereof, including in particular, any and all lists of advertisers and subscribers to *Mail,* together with copies of any contracts with such subscribers relating to *Mail* and any executory contracts for the purchase of advertising in *Mail,* free and clear of any lien, encumbrance, right or interest (including any option or any license or other right of use) of or in favor of a third party, transfer restriction (including any right of first offer or refusal or similar provision) or any other similar right or interest whatsoever;

7.3.3 third, to the payment of loans by any Partner to the Partnership and the payment of the expenses of liquidation;

7.3.4 fourth, to the setting up of any reserve which the General Partner may deem reasonably necessary for contingent or unforeseen liabilities or obligations of the Partnership or any liability or obligation not then due and payable; provided, however, that any such reserve shall be paid over by the General Partner into a Partnership account established for such purpose, to be held in such account for the purpose of disbursing such reserves in payment of such liabilities, and, at the expiration of such holdback period as the General Partner shall deem advisable, to distribute the balance thereafter remaining in the manner herein provided; and

7.3.5 fifth, to payment to the Partners, in accordance with the following order of priority:

(a) First, the Partnership shall distribute to the Class A Limited Partner, subject to the prior satisfaction of the claims of all creditors, cash in an amount equal to the aggregate cash distributed to the Partnership from the Joint Venture pursuant to clause (2)(a) of Section VI B of the JOA.

(b) Thereafter, the Partnership shall distribute all remaining assets to the Class B Limited Partner(s) and the General Partner in accordance with their respective Capital Account balances.

7.4 *Statements on Liquidation.* Each of the Partners shall be furnished with a statement which shall set forth the assets and liabilities of the Partnership as at the date of dissolution and as at the date of complete liquidation, the share of each Partner thereof, and a reasonably detailed report of the manner of disposition of the assets of the Partnership. Upon compliance with the foregoing distribution plan and completion of the winding up process, the Partnership shall be terminated and the General Partner shall cause the cancellation of the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware and shall take such other action as may be necessary to terminate the Partnership.

7.5 *Return of Capital or Partition.* No Partner shall have any right to receive its Capital Contribution or any profit of the Partnership or to obtain a partition of assets of the Partnership or to cause the dissolution of the Partnership other than as provided in this Agreement. The General Partner shall not be personally liable for the return of the Capital Contributions of the Limited Partners, or of any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

Article VIII

Records and Accounting

8.1 *Books and Records.* At all times during the continuance of the Partnership, the General Partner shall keep or cause to be kept books of account of the transactions of the Partnership consistent with the provisions of the JOA. The books of account, records and all documents and other writings of the Partnership shall be kept and maintained at the principal office of the Partnership or of the General Partner. Each Partner and its representatives shall, upon reasonable notice to the General Partner, have access to such books, records and documents during reasonable business hours and may inspect and make copies of any of them at its own expense.

8.2 *Bank Accounts.* The General Partner may from time to time open and maintain on behalf of the Partnership a bank account or accounts with such depositaries as the General Partner shall determine, in which monies received by or on behalf of the Partnership shall be deposited. All withdrawals from such accounts shall be made upon the signature of such Person or Persons as the General Partner may from time to time designate.

8.3 *Required Filings.* The General Partner shall cause the Partnership to file, on or before the dates the same may be due, giving effect to extensions obtained, all reports, returns and applications which may be required by any taxing authority or other governmental body having jurisdiction. The General Partner shall timely deliver to each of the Partners such information, including Schedules K–1, as may be necessary for the preparation by such Partner of its Federal, state or other tax returns.

Article IX

Miscellaneous

9.1 *Supervision of Editorial Staff.* In order to fulfill its obligations under the JOA, CPC shall exercise exclusive supervision over all editorial and reportorial functions of the *Mail.* CPC shall select the staff, designate all editors and newsroom managers, make all newsroom assignments, and set all editorial policies for the *Mail.* DGHC, as General Partner of the Partnership, shall cause the Joint Venture to employ the employees selected by CPC and to assign those employees to work exclusively as the staff of the *Mail.* CPC shall have complete control and authority over the editors and other staff of the editorial department of the *Mail* (including the exclusive authority to determine the number, identity and salaries of the editorial department of the *Mail* and to make hiring and firing decisions, so long as the Editorial Expense for the *Mail* does not exceed the approved budgeted amount for the *Mail*). The term "editorial department" as used herein shall include the news, editorial, editorial promotion and photographic functions of the *Mail.*

9.2 *Notices.* All notices, demands and other communications which may or are to be given hereunder or with respect hereto shall be in writing, shall be given either by personal delivery, facsimile or by certified or special express mail or recognized overnight delivery service, first class postage prepaid, or when delivered to such delivery service, charges prepaid, return receipt requested, and shall be deemed to have been given or made when personally received by the addressee, addressed as follows:

(1) If to the Class A Limited Partner, to:

MediaNews Group, Inc., 101 W. Colfax Ave., Suite 1100, Denver, CO 80202, Attn: Joseph J. Lodovic, IV President, Facsimile: (303) 954–6320.

With a copy to:

Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004–1482, Attn: James Modlin, Facsimile: (212) 422–4726.

or such other addresses as the Class A Limited Partner may from time to time designate.

(2) If to the General Partner or the Partnership, to:

Daily Gazette Company, 1001 Virginia Street, East Charleston, WV 25301, Attn: Ms. Elizabeth E. Chilton, President, Facsimile: (304) 348–5180.

And

Attn. Mr. Norman Watts Shumate III, Facsimile: (304) 348–1795.

With a copy to:

Edmondson + Blumenthal PLLC, 12 Cadillac Drive, Suite 210, Brentwood, TN 37027, Attn: Steven E. Blumenthal, Facsimile: (615) 296–4600.

or such other addresses as the General Partner or the Partnership may from time to time designate.

9.3 *Further Assurances.* The Partners will execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purposes of this Agreement.

9.4 *Agreement in Counterparts.* This Agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the original or to the same counterpart.

9.5 *Captions.* Captions contained in this Agreement are inserted as a matter of convenience and in no way define the scope of this Agreement or the intent of any provision hereof.

9.6 *Construction.* None of the provisions of this Agreement shall be for the benefit of or be enforceable by any creditor of the Partnership or of any Partner (subject to the security interest and other rights in favor of the Joint Venture's lenders).

9.7 *Successors.* Except as otherwise expressly provided in this Agreement, all provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by or against the successors and permitted assigns of the parties hereto.

9.8 *Amendments.*

9.8.1 This Agreement may be modified or amended only upon the written agreement of each of the Partners (and subject to any applicable contractual restrictions under the Joint Venture's financing arrangements), except that this Agreement may be amended from time to time by the General Partner without the consent of the Limited Partners:

(a) to reflect the rights and obligations of a Person admitted as a Partner upon the issuance of Partnership Interests pursuant to Section 6.9 and any change in the rights and obligations of any existing Partner upon the issuance to any Person of partnership interests pursuant to Section 6.9, provided that the consent of an affected Limited Partner and/or the Warrant Holder shall be required to the extent such amendment adversely affects the interests of such Limited Partner and/or the Warrant Holder, as the case may be;

(b) to change the Partnership's principal office or other place of business;

(c) to change the Partnership's method of allocating income and loss for tax purposes to the extent required by new or changes to Treasury Regulations, Internal Revenue Service announcements or rulings, or final courts decisions, provided that the consent of an affected Limited Partner and/or the Warrant Holder shall be required to the extent such amendment adversely affects the interests of such Limited Partner and/or the Warrant Holder, as the case may be;

(d) to add to the representations, duties or obligations of the General Partner (other than duties or obligations relating to the editorial and reportorial functions of the *Mail*); and

(e) to cause to be deleted from this Agreement any provision or part of any provision that is found by a court of competent jurisdiction to be invalid or unenforceable in any respect, which provision may be deleted from this Agreement by the General Partner to the extent of such invalidity or unenforceability without in any way affecting the remaining parts of such provision or the remaining provisions of this Agreement.

No change in the number of General Partner Units or Class B Limited Partner Units (whether by an amendment or otherwise) will be effective unless it has been executed or approved in writing by the holders of a majority of the Class B Limited Partner Units (or, prior to the exercise in full of the Warrant (or the termination of the Warrant), the Warrant Holder).

9.8.2 The General Partner will give notice to the Limited Partners (and, prior to the exercise in full (or termination) of the Warrant, the Warrant Holder) ten days prior to any modification or amendment to this Agreement pursuant to this Section 9.8.

9.8.3 The General Partner will cause the Partnership to prepare and file any amendment to the Certificate of Limited Partnership that may be required to be filed under the Act as a consequence of any amendment to this Agreement.

9.9 *Governing Law.* This Agreement and the rights and obligations of the Partners shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of laws principles.

9.10 *Integration.* This Agreement amends and restates the Prior Partnership Agreement in its entirety. This Agreement, together with the JOA and the Warrant, constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof

and supersedes all prior agreements (oral or written) and understandings pertaining thereto. In the event of any conflict between this Agreement and the JOA, this Agreement shall control.

9.11 *Severability.* The invalidity of any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof.

9.12 *Representations by Partners.* Each Partner represents and warrants to the other Partners and the Partnership that this Agreement is and will remain its valid and binding agreement, enforceable in accordance with its terms. Each Partner represents and warrants to the Partnership and the other Partners that: (i) it is fully aware that its Partnership Interest is not being registered under the Securities Act of 1933, as amended, and has been issued and sold in reliance upon federal and state exemptions for transactions not involving a public offering, that its Partnership Interest cannot and will not be sold or transferred except in a transaction that is exempt from registration under federal and state securities laws, and that such Partner is an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended.

9.13 *Non-Disclosure.* Each Partner agrees that, except as otherwise consented to by the General Partner, all non-public information furnished to it or to which it has access pursuant to this Agreement will be kept confidential and will not be disclosed by such Partner or by any of its agents, representatives or employees, in any manner whatsoever, in whole or in part, except that:

(a) each Partner shall be permitted to disclose such information to those of its (and its Affiliates') Affiliates, agents, representatives and employees who need to be familiar with such information in connection with such Partner's investment in the Partnership and who agree to maintain the confidentiality thereof in accordance with the provisions of this Section 9.13;

(b) each Partner shall be permitted to disclose such information to its Affiliates;

(c) each Partner shall be permitted to disclose information to the extent required by law, including federal or state securities laws or regulations, by the rules and regulations of any stock exchange or association on which securities of such Partner or any of its Affiliates are traded or by subpoena or other legal process so long as such Partner shall have first given the Partnership notice in advance of such disclosure (so that the Partnership may attempt to contest the necessity of disclosing such information) to the extent practicable under the circumstances;

(d) each Partner shall be permitted to disclose information to the extent necessary for the enforcement of any right of such Partner arising under this Agreement;

(e) each Partner shall be permitted to disclose information to a permitted Transferee or a prospective Permitted Transferee, so long as such Person agrees (in a writing which provides the Partnership with an independent right of enforcement) to be bound by the provisions of this Section;

(f) each Partner shall be permitted to disclose information that is or becomes generally available to the public other than as a result of a disclosure by such Partner, its agents, representatives, or employees; and

(g) each Partner shall be permitted to disclose information that becomes available to such Partner on a nonconfidential basis from a source (other than the Partnership, any other Partner, or their respective agents, representatives, and employees) that, to the best of such Partner's knowledge, is not prohibited from disclosing such information to such Partner by a legal, contractual, or fiduciary obligation to the Partnership or any other Partner or hat is derived by such Partner or its agents without reliance on information the disclosure of which is prohibited by this Section 9.13.

9.14 *Execution of Papers.* The Partners agree that they will not unreasonably refuse to execute such instruments, documents and papers as the General Partner deems necessary or appropriate to carry out the intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed by their respective officers duly authorized.

DAILY GAZETTE HOLDING COMPANY, LLC

By: Daily Gazette Company, Sole Member

By: _____

Title: _____

CHARLESTON PUBLISHING COMPANY

By: _____

Title: _____

MEDIANEWS GROUP, INC. now known as AFFILIATED MEDIA, INC. (for purposes of Section 6.3)

By: _____

Title: _____

DAILY GAZETTE COMPANY (for purposes of Section 4.9)

By: _____

Title: _____

EXHIBIT A—TRANSFERS TO PARTNERSHIP BY PARTNERS

Partner	*Contribution*	*Units received*
Daily Gazette Holding Company, LLC	(i) 100% of the ownership interests in Daily Gazette Publishing Company, LLC. (ii) cash and other assets provided in Master Restructuring Agreement.	9,358 General Partner Units.
Charleston Publishing Company	Intangible and other assets more fully described in Master Restructuring Agreement.	1 Class A Limited Partnership Unit.

EXHIBIT B—CAPITAL ACCOUNT BALANCES AS OF DATE HEREOF

Partner	*Value*
Daily Gazette Holding Company, LLC	$63,750,000
Charleston Publishing Company	$1

AMENDED AND RESTATED OPERATING AGREEMENT

OF

DAILY GAZETTE HOLDING COMPANY, LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT OF DAILY GAZETTE HOLDING COMPANY, LLC, is entered into effective as of _____, 2009, by and between Daily Gazette Holding Company, LLC, a limited liability company organized pursuant to the Delaware Limited Liability Company Act (the "Company"), and Daily Gazette Company, a West Virginia corporation, its sole member.

Recital

The parties desire to amend and restate the Operating Agreement of the Company, dated as of May 7, 2004, as set forth herein.

Agreement

In consideration of the mutual covenants and agreements set forth in this Agreement, the parties agree as follows.

1. Definitions

The following terms, as used in this Agreement, have the meanings set forth in this Section:

"Act" means the Delaware Limited Liability Company Act.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person. For purposes of this definition, the term "controls" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. The terms "controlled by" and "under common control with" have meanings corresponding to the meaning of "controls."

"Agreement" means this Amended and Restated Operating Agreement, as it may be amended, restated, modified, or supplemented from time to time in accordance with its terms.

"Board of Managers" shall have the meaning set forth in Section 5 hereof.

"Certificate" is the Certificate of Formation of Daily Gazette Holding Company, LLC as filed with the Secretary of State of the State of Delaware, as the same may be amended from time to time.

"Class B Limited Partner" shall have the meaning set forth in Section 1.1.11 of the Partnership Agreement.

"Class B Limited Partner Unit" shall have the meaning set forth in Section 1.1.12 of the Partnership Agreement.

"Class B Managers" means the Managers appointed by either the Warrant Holder or the Class B Limited Partner(s) pursuant to Section 5(b)(ii) hereof.

"JOA" means that certain Second Amended and Restated Joint Venture Agreement dated as of even date herewith, as such agreement may be amended from time to time.

"Joint Venture" means Charleston Newspapers, an unincorporated West Virginia joint venture.

"Manager" means a member of the Board of Managers.

"Member" means Daily Gazette Company and its successors-in-interest under this Agreement.

"Person" means an individual, corporation, limited liability company, association, general partnership, limited partnership, limited liability partnership, joint venture, trust, estate, or other entity or organization.

"Partnership" means Charleston Newspapers Holdings, L.P., a Delaware limited partnership.

"Partnership Agreement" means that certain Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings, L.P., dated as of even date herewith, as such agreement may be amended from time to time

"Put/Call Agreement" means a put/call agreement entered into by a Class B Limited Partner, the Company and the Partnership in connection with the exercise by the Warrant Holder of its right to purchase Class B Limited Partner Units pursuant to the terms of the Warrant, in substantially the form attached to the Warrant as *Exhibit B* thereto.

"Warrant" means that certain warrant, dated as of even date herewith, granted to the Warrant Holder by the Partnership to purchase Class B Limited Partner Units.

"Warrant Holder" means Charleston Publishing Company or any permitted transferee of the Warrant.

2. The Company and Its Business

(a) Formation. The Company was formed on April 12, 2004, pursuant to the provisions of the Act. Except as provided in this Agreement, all rights, liabilities, and obligations among the Member, the Company, and other Persons, shall be as provided in the Act, and this Agreement shall be construed in accordance with the provisions of the Act. To the extent that the rights or obligations of the Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

(b) Filing of Certificate of Limited Liability Company. The Member has caused the Certificate to be filed with the Secretary of State of Delaware and shall cause the Certificate to be filed or recorded in any other public office where filing or recording is required or advisable. The Member shall do, and continue to do, all other things that are required or advisable to maintain the Company as a limited liability company existing pursuant to the laws of the State of Delaware.

(c) Company Name. The name of the Company shall be "Daily Gazette Holding Company, LLC." The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Member deems appropriate or advisable. The Member shall file any assumed name certificates and similar filings, and any amendments thereto, that the Member considers appropriate or advisable.

(d) Term of the Company. The term of the Company commenced on the date of the filing of the Certificate with the Secretary of State of the State of Delaware and shall continue until the Company is dissolved and its affairs wound up in accordance with the Act and Article 8 of this Agreement.

(e) Purpose of the Company. The purpose of the Company is to do all lawful acts and things necessary, appropriate, proper, advisable, incidental to, or convenient for the furtherance and accomplishment of the foregoing purpose.

(f) Authority of the Company. The Company shall be empowered and authorized to do all lawful acts and things necessary, appropriate, proper, advisable, incidental to, or convenient for the furtherance and accomplishment of its purposes.

(g) Principal Office and Other Offices; Registered Agent. The address of the Company's registered office which is required to be maintained by the Company in the State of Delaware pursuant to Section 18–104 of the Act shall be located at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of the Company's registered agent at such address is Corporation Service Company. The principal office of the Company shall be c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The Company may maintain any other offices at any other places that the Board of Managers deems advisable. The Company may, upon compliance with the applicable provisions of the Act, change its principal office or registered agent from time to time at the discretion of the Board of Managers.

(h) Foreign Qualification. The Company shall take all necessary actions to be authorized to conduct business legally in all appropriate jurisdictions, including registration or qualification of the Company as a foreign limited liability company in those jurisdictions that provide for registration or qualification.

(i) Fiscal Year. The fiscal year of the Company shall be the calendar year. The Company shall have the same fiscal year for income tax purposes and for financial accounting purposes.

3. Company Capital

(a) Capital Contributions. The Member shall make such capital contributions to the Company as it deems appropriate.

(b) Disbursements. Subject to Section 5 hereof, the Company shall pay all costs and expenses of the Company business. The Company may set aside funds for any items that are proper Company purposes, as determined by the Board of Managers.

4. Cash Distributions; Allocations of Profits and Losses

(a) Distributions. All cash of the Company available for distribution shall be distributed to the Member at such times and in such amounts as the Board of Managers may determine.

(b) Allocations of Profits and Losses. All profits and losses of the Company shall be allocated to the Member.

5. Rights and Powers of the Member; Board of Managers.

(a) Management Rights Generally. The responsibility and control of the management and conduct of the Company's day-to-day activities and operations shall be vested in the Member, subject to Section 5(b) below.

(b) Board of Managers.

(i) The business and affairs of the Company shall be managed by or under the direction of a Board of Managers (the "Board of Managers") and all actions outside of the ordinary course of business of the Company, to be taken by or on behalf of the Company, shall require the approval of the Board of Managers. Except as otherwise provided in this Agreement, the Board of Managers shall have the duties, powers and rights of the board of directors of a corporation organized under the General Corporation Law of the State of Delaware (it being understood and agreed, nonetheless, that the individual Managers appointed by the Warrant Holder or the Class B Limited Partner(s) as provided below represent the interests of the Warrant Holder or the Class B Limited Partner(s)).

(ii) The Board of Managers shall consist of up to five individual Managers appointed by the Member and in no event may the Board of Managers consist of more than five Managers without the consent of the Class B Managers; provided, however, that in no event may the Board of Managers consist of more than five Managers unless not fewer than forty percent (40%) of the Managers are Class B Managers. Unless and until the Warrant Holder exercises its rights under the Warrant to purchase any Class B Limited Partner Units, the Member shall delegate its right to appoint two (2) of the Managers (or such greater number as required by the first sentence of this section) to the Warrant Holder, and upon the purchase by the Warrant Holder of any Class B Limited Partner Units pursuant to the Warrant, the Member shall delegate its right to appoint two (2) of the Managers (or such greater number as required by the first sentence of this section) to the Class B Limited Partner(s). If there is more than one Class B Limited Partner, then the right to appoint two (2) of the Managers (or such greater number as required by the first sentence of this section) will be vested solely in the Class B Limited Partner that supervises editorial and reportorial functions of *The Charleston Daily Mail* pursuant to Section 9.1 of the Partnership Agreement. Neither the Warrant Holder nor the Class B Limited Partner(s) may appoint current employees of the Joint Venture, the Member, the Company, the Partnership or Daily Gazette Publishing Company, LLC to represent it on the Board of Managers.

(iii) The Board of Managers shall only have the power and authority to act by the vote of the constituent Managers and no individual Manager, in the capacity of Manager, shall have the power or authority to act as the agent or representative of the Company or to otherwise bind the Company. Voting by the Managers shall be on a per capita basis. Actions may be taken by the Board of Managers by, but only by, a majority vote of the Managers; provided, however, that actions by the Board of Managers concerning (x) the budgeted Editorial Expenses (as that term is defined in the JOA) for *The Charleston Gazette* and *The Charleston Daily Mail* or (y) "news hole" and color usage allocations for *The Charleston Gazette* and *The Charleston Daily Mail* shall require the prior approval of at least 75% of the Managers (*i.e.,* if the Board of Managers consists of four Managers, not fewer than three Managers must vote in favor of the particular action, and if the Board of Managers consists of five Managers, not fewer than four Managers must vote in favor of the particular action); provided further that no Manager appointed by the Warrant Holder or the Class B Limited Partner(s), as the case may be, shall participate in any decisions concerning the news, editorial policy or content of *The Charleston Gazette* or *The Charleston Gazette-Mail* or have any connection with the news and editorial operations of *The Charleston Gazette* or *The Charleston Gazette-Mail,* and all such decisions shall be made exclusively by the Managers appointed by the Member. Either the Member or, as applicable, the Warrant Holder or the Class B Limited Partner(s) may at any time, by written notice to the other, remove its Managers, with or without cause, and substitute Managers to serve in their stead. No Manager shall be removed from office, with or without cause, without the consent of the Person that designated such Manager. Each Manager appointed by the Warrant Holder or the Class B Limited Partner(s) may act (or refrain from acting), and the Warrant Holder or the Class B Limited Partner(s) may instruct such Managers, in their capacity as such, to act (or refrain from acting) solely according to the interests (or the perceived interests) of the Warrant Holder or the Class B Limited Partner(s) and none of the foregoing shall be deemed to breach any fiduciary duty that, pursuant to this Agreement or at law or in equity, the Warrant Holder or the Class B Limited Partner(s) otherwise would be deemed to have to the Company, the Partnership or the Member. The Board of Managers shall hold such meetings no less frequently than once per calendar quarter and at such times and places as shall be determined by the Managers. Special meetings of the Board of Managers may be called at any time by agreement of the Managers. The Board of Managers may establish such procedures for the conduct of meetings as may be agreed by the Managers.

(c) Officers. The Board of Managers may appoint such officers, from time to time, as the Board of Managers deems necessary and advisable.

(d) Authority of the Member. Subject to the management of the business and affairs of the Company by the Board of Managers pursuant to Section 5(b) hereof, the Member shall have all powers necessary to manage and control the day-to-day activities and operations of the Company.

(e) Admission of Additional Members. The Member, in its discretion, may admit additional members to the Company on terms and conditions agreed to by the Member and the Person being admitted as an additional member; provided, however, that the Board of Managers shall not consist of more than five Managers without the consent of the Class B Managers and in no event may the Board of Managers consist of more than five Managers if fewer than forty percent (40%) of the Managers are Class B Managers.

(f) Limitation of Liability of the Member and Managers. The debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the Company; and the Member and the Managers shall not be obligated

personally for any such debt, obligation, or liability of the Company solely by reason of being the Member or a Manager, except and only to the extent as otherwise expressly required by law.

(g) Indemnification.

(i) In any threatened, pending, or completed claim, action, suit, or proceeding to which the Member or a Manager was or is a party or is threatened to be made a party by reason of its activities on behalf of the Company, the Company shall indemnify and hold harmless such Member and Manager against losses, damages, expenses (including attorneys' and accountants' fees), judgments, and amounts paid in settlement actually and reasonably incurred in connection with such claim, action, suit, or proceeding, except that the Member and the Managers shall not be indemnified for actions constituting the improper receipt of personal benefits, willful misconduct, recklessness, or gross negligence with respect to the business of the Company; provided, however, that to the extent the Member or a Manager has been successful on the merits or otherwise in defense of any action, suit, or proceeding to which it was or is a party or is threatened to be made a party by reason of the fact that it was or is a Member or Manager of the Company, or in defense of any claim, issue, or matter in connection therewith, the Company shall indemnify such Member and Manager and hold him harmless against the expenses (including attorneys' and accountants' fees) actually incurred by such Member and Manager in connection therewith.

(ii) Expenses (including attorneys' and accountants' fees) incurred in defending a civil or criminal claim, action, suit, or proceeding shall be paid by the Company in advance of the final disposition of the matter upon receipt of an undertaking by or on behalf of the Member or a Manager to repay such amount if such Member or Manager is ultimately determined not to be entitled to indemnity.

(iii) For purposes of this Section 5(g), the termination of any action, suit, or proceeding by judgment, order, settlement, or otherwise adverse to the Member or a Manager shall not, of itself, create a presumption that the conduct of such Member or Manager constitutes willful misconduct, recklessness, or gross negligence with respect to the business of the Company.

6. Permitted Transactions

(a) Other Businesses. The Member, the Managers and their respective affiliates, agents, and representatives, may engage in or possess an interest in other business ventures of any nature or description, independently or with others, whether currently existing or hereafter created and whether or not competitive with or advanced by the business of the Company. The Company shall not have any rights in or to the income or profits derived therefrom.

(b) Transactions with the Company. The Company may, in the sole discretion of the Board of Managers, contract with any Person (including the Member or any Person affiliated with the Member or in which the Member may be interested) for the performance of any services which may reasonably be required to carry on the business of the Company, and any such Person dealing with the Company, whether as an independent contractor, agent, employee, or otherwise, may receive from others or from the Company profits, compensation, commissions, or other income incident to such dealings.

7. Assignment, Transfer, or Sale of Interests in the Company

Subject to the Put/Call Agreement, the Company may sell, assign, pledge, or otherwise encumber or transfer all or any part of its interest in the Company to any Person.

8. Dissolution and Termination of the Company

(a) Events of Dissolution. The Company shall dissolve upon the earlier to occur of:

(i) an election to dissolve the Company made by the Board of Managers, subject to any restriction in any agreement to which the Company is a party; or

(ii) the happening of any event that, under the Act, causes the dissolution of a limited liability company.

(b) Actions on Dissolution. Upon the dissolution of the Company, the Board of Managers shall act as liquidator to wind up the Company. The proceeds of liquidation shall be applied first to the payment of the debts and liabilities of the Company (including any loans to the Company made by the Member), the expenses of liquidation, and the establishment of any reserves that the liquidator deems necessary for potential or contingent liabilities of the Company. Remaining proceeds shall be distributed to the Member as provided in Section 4(a). Upon the dissolution and winding up of the Company, the liquidator shall file a certificate of cancellation with the Secretary of State of Delaware in accordance with Section 18–203 of the Act. Upon the completion of the distribution of Company assets and the proceeds of liquidation as provided in this Section 8(b), the Company shall be terminated.

9. Books, Records, and Returns

(a) Books of Account and Records. A copy of this Agreement and any other records required to be maintained by the Act shall be maintained at the principal office of the Company at the location specified in Section 2(g). All such books and records shall be available for inspection and copying by the Member or its duly authorized representatives during ordinary business hours. The Company shall keep accurate books and records of the operation of the Company which shall reflect all transactions, be appropriate and adequate for the Company's business and for carrying out the provisions of this Agreement.

(b) Deposit of Company Funds. All revenues, assessments, loan proceeds, and other receipts of the Company will be maintained on deposit in interest-bearing and non-interest bearing accounts and other investments as the Board of Managers deems appropriate.

10. Miscellaneous

(a) Captions. All section or paragraph captions contained in this Agreement are for convenience only and shall not be deemed part of this Agreement.

(b) Pronouns, Singular and Plural Form. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, and neuter as the identity of the Person or Persons referred to may require, and all words shall include the singular or plural as the context or the identity of Persons may require.

(c) Further Action. The parties shall execute and deliver all documents, provide all information, and take, or forbear from, all actions that may be necessary or appropriate to achieve the purposes of this Agreement.

(d) Entire Agreement. Except as to matters with respect to which additional agreements are referenced herein, this Agreement contains the entire understanding among the parties and supersedes any prior understandings and agreements between them regarding the subject matter of this Agreement.

(e) Agreement Binding. This Agreement shall be binding upon the successors and assigns of the parties.

(f) Severability. If any provision or part of any provision of this Agreement shall be invalid or unenforceable in any respect, such provision or part of any provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provision or the remaining provision of this Agreement.

(g) Counterparts. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

(h) Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Delaware (without regard to the choice of law provisions thereof).

(i) Amendment. This Agreement shall not be amended without the prior written consent of the Warrant Holder or, if applicable, the Class B Limited Partner(s).

(j) No Third-Party Beneficiaries. With the exception of the Warrant Holder, the Class B Limited Partner(s) and the Class B Managers, this Agreement is not intended to, and shall not be construed to, create any right enforceable by any Person not a party hereto, including any creditor of the Company or of the Member.

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first above written.

DAILY GAZETTE COMPANY
By: _____
Elizabeth B. Chilton
President

DAILY GAZETTE HOLDING COMPANY, LLC
By: Daily Gazette Company, its sole member

By: _____
Elizabeth B. Chilton
President

SECOND AMENDED AND RESTATED JOINT OPERATING AGREEMENT BY AND AMONG DAILY GAZETTE COMPANY, A WEST VIRGINIA CORPORATION; DAILY GAZETTE HOLDING COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY; CHARLESTON NEWSPAPERS, A WEST VIRGINIA UNINCORPORATED JOINT VENTURE; CHARLESTON NEWSPAPERS HOLDING, L.P., A DELAWARE LIMITED PARTNERSHIP; DAILY GAZETTE PUBLISHING COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND CHARLESTON PUBLISHING COMPANY, A DELAWARE CORPORATION

_____, 2009

THIS SECOND AMENDED AND RESTATED JOINT OPERATING AGREEMENT (this "JOA") is dated as of _____, 2009 by and among Daily Gazette Company, a West Virginia corporation ("DGC"); Daily Gazette Holding Company, LLC, a Delaware limited liability company ("DGHC"); Charleston Newspapers, a West Virginia unincorporated joint venture (the "Joint Venture"); Charleston Newspapers Holdings, L.P., a Delaware limited partnership (the "Limited Partnership"); Daily Gazette Publishing Company, LLC, a Delaware limited liability company ("DGPC"); and Charleston Publishing Company, a Delaware corporation ("CPC").

Whereas, DGHC, the Joint Venture, the Limited Partnership, DGPC and CPC previously entered into an Amended and Restated Joint Venture Agreement dated as of May 7, 2004 (the "Prior JVA"), pursuant to which the Joint Venture prior to the date hereof managed and operated *The Charleston Gazette* ("*Gazette*"), *The Sunday Gazette-Mail* ("*Gazette-Mail*") and *The Charleston Daily Mail* ("*Mail*") (collectively, the "Newspapers" and individually a "Newspaper"), except for the news and editorial departments of *Gazette* and *Gazette-Mail,* on one hand, and *Mail,* on the other, which have remained separate and independent;

Whereas, simultaneously with the execution of this agreement, DGC and CPC and certain affiliated parties are effectuating certain transactions relating to the ownership and management of the Joint Venture and which are described herein;

Whereas, DGC, CPC, DGHC, DGPC, the Limited Partnership and the Joint Venture desire to amend various provisions of the Prior JVA, to restate it in its entirety and to supplement it, as herein provided;

Whereas, the purpose and intent of the JOA is to provide a plan of common operation of the Newspapers, so as to (1) provide efficient newspaper operations, (2) produce high quality newspapers that are attractive to readers and advertisers and (3) maintain the separate identities and free editorial and news voices of the Newspapers; and

Whereas, the JOA will continue to maintain as separate and independent the respective news and editorial operations of the Newspapers consistent with the requirements of the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.;*

Now Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereby agree as follows:

I. The Limited Partnership

A. *General.* On May 7, 2004, a limited partnership (the "Limited Partnership") was formed by DGHC, as the sole General Partner, CPC, as the sole Class A Limited Partner, and ABRY/Charleston, Inc., as the sole Class B Limited Partner. Prior to the date hereof, ABRY/Charleston, Inc.'s entire interest as a Class B Limited Partner in the Limited Partnership was redeemed by the Partnership. Simultaneously herewith, the Limited Partnership is granting to CPC (in its capacity as the holder of the Warrant and any permitted transferee of the Warrant, the "Warrant Holder") a warrant (the "Warrant") to subscribe for and purchase up to an aggregate number of Class B Limited Partner Units in the Limited Partnership that constitute a twenty percent (20%) Percentage Interest (as defined in the Amended and Restated Limited Partnership Agreement of the Limited Partner dated as of the date hereof (the "Limited Partnership Agreement"), by and among DGHC and CPC, the Limited Partnership) as of the date of exercise, subject to adjustment as provided therein.

B. *Future Capital Contributions; Capital Assets.* CPC and any other limited partners of the Limited Partnership shall have no obligation to make any further contributions to the capital of the Limited Partnership. DGHC shall in the future make such additional contributions to the capital of the Limited Partnership as shall be necessary in its reasonable judgment to (1) fund acquisitions of capital assets necessary for the business and operations of the Limited Partnership and/or the Joint Venture; (2) fund acquisitions of capital assets necessary for the business and operations of the editorial departments of each of the Newspapers to the extent such editorial departments' tangible capital assets on the date hereof require supplementation or replacement, (3) provide the Limited Partnership and the Joint Venture with adequate working capital, and (4) ensure that the Limited Partnership and the Joint Venture have adequate funds to make on a timely basis the cash distributions and payments contemplated by Section V J (1) through (4) of this JOA. DGHC may from time to time cause the Limited Partnership or the Joint Venture to distribute and transfer to it one or more capital assets of the Limited Partnership so long as after such transfer the Limited Partnership and the Joint Venture shall have, as a result of their remaining capital assets and any other capital assets which DGHC shall at the time contribute or make available to the Limited Partnership and/or the Joint Venture pursuant hereto, capital assets whose adequacy and suitability for the Limited Partnership's and/or the Joint Venture's performance of the business and operations of the Newspapers are substantially the same as prior to such transfer.

C. *Management of Partnership and General Partner.* The Limited Partnership shall be managed exclusively by DGHC as the General Partner of the Limited Partnership. The

members of DGHC have delegated the management of DGHC to a board of managers consisting of up to five individual managers, and in no event may the board of managers consist of more than five managers without the consent of the managers appointed pursuant to Section 5(b) of the Operating Agreement of DGHC by the Warrant Holder or the Class B Limited Partner(s), as applicable; provided, however, that in no event may the board of managers consist of more than five managers unless not fewer than forty percent (40%) are appointed by the Warrant Holder or the Class B Limited Partner(s), as applicable. DGC will appoint the members of DGHC's board of managers; provided, however, that until and unless the Warrant Holder exercises its rights under the Warrant and purchases any Class B Limited Partner Units, DGC will delegate to the Warrant Holder the right to appoint two (2) of the members of DGHC's board of managers (or such greater number as required by Section 5(b)(ii) of the Operating Agreement of DGHC) and, upon the purchase by the Warrant Holder of any Class B Limited Partner Units pursuant to the Warrant, DGC will delegate to the Class B Limited Partner(s) the right to appoint two (2) of the members of DGHC's board of managers (or such greater number as required by Section 5(b)(ii) of the Operating Agreement of DGHC). If there is more than one Class B Limited Partner, then the right to appoint two (2) of the members of DGHC's board of managers (or such greater number as required by Section 5(b)(ii) of the Operating Agreement of DGHC) will be vested solely in the Class B Limited Partner that supervises editorial and reportorial functions of the *Mail* pursuant to Section V H hereof. The Warrant Holder or the Class B Limited Partner(s), as applicable, may not appoint any person who is, at the time of his or her appointment, an employee of the Joint Venture, DGC, DGHC, the Limited Partnership or DGPC to represent it on DGHC's board of managers.

II. The Joint Venture

A. *Continuation of Joint Venture.* By this JOA, the Limited Partnership and DGPC shall continue the conduct of a joint venture for the publication of the Newspapers; provided (1) that there shall continue to be no merger, combination or amalgamation of the editorial or reportorial staff of *Gazette* and *Gazette-Mail,* on the one hand, and *Mail,* on the other hand, (2) that CPC shall continue to independently determine the editorial, news policy and content of *Mail* and (3) that DGHC shall continue to independently determine the editorial, news policy and content of *Gazette* and *Gazette-Mail.*

B. *Name and Place of Business.* The Joint Venture shall continue to be conducted under the name "Charleston Newspapers" from its place of business at 1001 Virginia Street, East, City of Charleston, County of Kanawha, State of West Virginia.

C. *Ownership of and Title to Property.* All of the parties hereto hereby confirm and agree that the ownership of and title to all real property and all tangible personal property used in and useful to the Joint Venture is exclusively in the Joint Venture rather than in any other party to this JOA, jointly or individually, and without regard to whether any property was contributed by any party to this JOA to the Joint Venture, was otherwise made available to the Joint Venture by any party to this JOA or was otherwise acquired by the Joint Venture, except that certain property is owned by G.M. Properties, Inc., a West Virginia corporation, of which all the outstanding shares are owned by the Joint Venture.

D. *Revenues, Expenses and Obligations.* The Joint Venture shall receive all income and revenues of the Joint Venture and shall pay all expenses incurred or assumed by it. No party hereto shall be or shall become liable upon any contract or other obligation of the Joint Venture or any other party hereto, unless such party shall expressly assume such contract or other obligation or liability is imposed by law.

E. *Management of Joint Venture.* Subject to the provisions of this JOA concerning the editorial independence of the Newspapers and such other limitations as are expressly set forth in this JOA or the Limited Partnership Agreement, the Limited Partnership shall have complete authority over and exclusive control and management of the business and affairs of the Joint Venture. The Limited Partnership may delegate such general or specific authority to the officers and employees of the Joint Venture with respect to the business and day-to-day operations of the Joint Venture as it may from time to time consider desirable, and the officers and employees of the Joint Venture may exercise the authority granted to them. The Joint Venture shall indemnify, defend and hold harmless DGPC and the Limited Partnership and its partners (and their respective shareholders, members, partners, directors, managers, officers, employees and agents) from any liability, loss or damage suffered by them by reason of any act or omission by them in connection with the business of the Joint Venture; provided, however, that indemnification shall not be available for any claim that results from the willful misconduct of such person or the breach by such person of its obligations under this JOA or other agreements to which such person may be subject. The Limited Partnership shall not be liable, in damages or otherwise, to the Joint Venture or its direct or indirect partners for any act or omission in the absence of willful misconduct.

III. Editorial Independence

Preservation of the editorial independence of the Newspapers is the essence of this JOA. DGHC and CPC each agree to strictly maintain the separateness of their respective limited liability company and corporate identities, as the case may be, and to retain the editorial independence of *Gazette* and *Gazette-Mail,* on the one hand, and *Mail,* on the other hand. CPC agrees that neither it nor any affiliate shall have any connection with the news or editorial operations of *Gazette* or *Gazette-Mail.* The separate editorial and reportorial staffs of *Gazette* and *Gazette-Mail,* on the one hand, and *Mail,* on the other hand, shall be independent and shall not be merged, combined or amalgamated, and their editorial policies shall be independently determined. DGHC agrees that neither it nor any affiliate shall have any connection with the news or editorial operations of *Mail.* Actions of DGHC with respect to *Mail* shall be confined exclusively to its role as General Partner of the Limited Partnership and in such role to cause the Joint Venture to print, sell and distribute the Newspapers, and to solicit and sell advertising space therein, and to perform such other functions as are described in this JOA.

IV. Term

Unless sooner terminated in accordance with the terms hereof, this JOA shall continue in effect from the date hereof through the close of business on June 30, 2024. This JOA shall thereupon be automatically renewed for additional five-year terms unless any party hereto gives written notice to the contrary to each of the other parties hereto at least 12 months prior to the end of the then-current term.

V. Continuing Operations

A. *General.* On and after the date hereof the Joint Venture shall control, supervise, manage and perform all operations (other than the news and editorial operations of the Newspapers) involved in producing, printing, selling

and distributing the Newspapers; to determine press runs, press times, page sizes and cutoffs of the Newspapers; to determine whether supplemental products will be distributed in or with one or more Newspapers, including whether and how certain products will be distributed to non-subscribers; to purchase newsprint, materials and supplies as required; to solicit and sell advertising space in the Newspapers; to collect the Newspapers' circulation and advertising accounts receivable; to provide or make available to each Newspaper such parking, subscriptions, messenger services, and data processing services as are reasonable and appropriate (the costs for which shall be borne by the Joint Venture and which shall not be an Editorial Expense); and to make all determinations and decisions and do any and all acts and things necessarily connected with the foregoing activities, including maintaining insurance coverage that is normal and appropriate for similarly-situated businesses. The parties recognize that DGHC as General Partner of the Limited Partnership shall have general charge and supervision of the business of the Newspapers, but shall treat each of the Newspapers as separate and distinct editorial products, and shall have no duties or authority with respect to the news or editorial functions of *Mail.*

B. *Production.* On and after the date hereof, the Joint Venture shall print the Newspapers on equipment owned or leased by the Joint Venture in plant or plants located at such place or places as the Joint Venture may determine, and all operations under this JOA, except the operation of the Newspapers' editorial departments, shall be carried on and performed by the Joint Venture with equipment from the Joint Venture's plant or plants or by independent contractors or agents selected by the Joint Venture. During the term of this JOA, CPC agrees to produce *Mail's* editorial and news copy, and DGHC agrees to produce *Gazette's* and *Gazette-Mail's* editorial and news copy, on equipment which is provided by the Joint Venture or which is compatible with the equipment used by the Joint Venture in its production facilities.

C. *Advertising and Circulation.*

(1) In general and subject to the exceptions set forth in clauses (a) through (d) below, the Joint Venture shall have complete control of and the right to determine the advertising and circulation rates for each of the Newspapers, and the Joint Venture shall use its reasonable efforts to sell advertising space in each Newspaper and to sell, promote and distribute each Newspaper as widely as practicable, consistent, however, with the objective of enhancing the overall economic performance of the Joint Venture and the Newspapers considered together in a manner that does not have a material adverse impact on the cash flow of the Joint Venture and the ability of the Joint Venture to make on a timely basis the cash distributions to the Limited Partnership and the payments to CPC contemplated by Section V J (1) through (4) hereof.

(a) The Joint Venture may not reduce the primary circulation area of *Mail* as of August 1, 2009 without CPC's approval.

(b) For a six month period commencing within a reasonable time after the date hereof, the Joint Venture will promote *Mail* by offering subscriptions at a 50% discounted rate. This promotion will be applicable solely to *Mail.*

(c) Except as set forth in clause (b) above or as otherwise approved by CPC, the Joint Venture will offer the same promotions for *Mail* and *Gazette* to potential subscribers.

(d) The Joint Venture will not discriminate against *Mail* in advertising, promotions or other sales or marketing efforts.

(2) The Joint Venture shall be free to select and alter from time to time the national advertising representative(s) for each of the Newspapers and the commission payable to such national advertising representative(s) and any other terms of such arrangement(s) shall be determined by the Joint Venture; provided, however that the Joint Venture will not discriminate against *Mail* in advertising, promotions or other sales or marketing efforts.

(3) The Joint Venture will pay to each of the Publisher of *Mail* and the Circulation Director of the Joint Venture a bonus for increases in *Mail's* average daily paid print circulation (as stated in the most recent six month audit conducted by the Audit Bureau of Circulations or other reputable third party media auditor). If the average daily paid print circulation of *Mail* for a six month audit period is greater than the average daily paid print circulation for the immediately preceding six month audit period, the bonus will be $3.00 per each additional subscriber and will be paid within a reasonable time after the Joint Venture receives the applicable six month audit.

D. *Publication Schedule.* DGHC shall publish *Gazette* daily on weekdays and Saturday mornings and *Gazette-Mail* on Saturday and Sunday mornings, and CPC shall publish *Mail* daily on weekday mornings. The Joint Venture will not change the press deadlines, delivery targets, number of editions and days of publication of *Mail* without CPC's approval. If at any time DGHC determines in the good faith exercise of business judgment as General Partner of the Limited Partnership that the continuation of any scheduled publication of any edition(s) of *Gazette* or *Gazette-Mail* is no longer in the best interests of those Newspapers and the Joint Venture considered together, then, subject to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.* (the "Act"), within thirty days after written notice by the Limited Partnership to CPC, the scheduled publication of such edition(s) may be discontinued. The Joint Venture will not discontinue publication of *Mail* without CPC's approval unless (i) the incremental revenue from *Mail* fails to cover *Mail's* incremental costs and the discontinuation of *Mail* can be effected by satisfying the failing firm test as applicable to joint operating agreement newspapers under the Act and (ii) the U.S. Department of Justice approves the discontinuation of publication of *Mail.*

E. *Office Space and Equipment.* On and after the date hereof, the Joint Venture shall furnish reasonably adequate office space for the separate use of the editorial departments of the *Gazette,* on the one hand, and *Mail* on the other hand. Such space shall be furnished with furniture and equipment which in the Joint Venture's reasonable judgment is sufficient and technologically adequate for each Newspaper's news and editorial operations.

F. *Other Services.* The parties recognize that in addition to the operations with respect to the Newspapers contemplated by this JOA, the Joint Venture may also utilize its production and other facilities, personnel, and agents for any other lawful activities it may deem appropriate, including distributing news, advertising or other information to non-subscribers; distributing or making available all or a portion of the information or advertising in the Newspapers to subscribers by means of electronic distribution, microfilm, microfiche or mail; commercial printing, including commercial printing of other newspapers; distribution services; and any other activities not inconsistent with its principal business; provided, however, that such activities shall not unreasonably interfere with the printing or distribution of the Newspapers.

G. *Future Purchases.* On and after the date hereof, subject to Section V H, the Joint Venture shall be responsible for the purchase of all inventory, supplies,

equipment and services as it deems to be necessary or desirable in connection with the operation of the Newspapers and other functions as are described in this JOA. In the event of shortages of inventory, supplies, equipment or services, no Newspaper shall be unfairly favored or discriminated against as regards the other.

H. *News and Editorial Matters.* DGHC and CPC shall furnish complete news and editorial services necessary and appropriate for the publication of their respective Newspapers in the manner provided in this JOA.

(1) Each of DGHC and CPC shall have complete and exclusive control and direction of the editorial department and editorial policies of its respective Newspapers and shall be responsible for and shall bear all of its respective Editorial Expense (as defined below). Without limiting the generality of the foregoing, each of DGHC and CPC shall have the exclusive right to determine the editorial format, dress, makeup and news and feature content of its respective Newspapers (including the content of all advertisements and advertising matter), and each shall have complete control and authority over the editors and editorial department staff of its respective Newspapers (including the exclusive authority to determine the number, identity and salaries of the editorial department of its respective Newspapers and to make hiring and firing decisions, so long as the Editorial Expense for each Newspaper does not exceed the budgeted amount for such Newspaper for the applicable year determined in accordance with Section V J(8) below). The term "editorial department" as used herein shall include the news, editorial, editorial promotion and photographic functions of the applicable Newspaper. DGHC and CPC each recognize the importance of the editorial quality of their respective Newspapers and each of them agrees to use reasonable efforts to provide editorial products for their Newspapers which are compatible with the needs of the Charleston, West Virginia area newspaper market and to preserve with respect to their Newspapers a high standard of newspaper quality and journalistic excellence.

(2) The amount of reading content (sometimes known as "news hole") and the amount of color usage of each of the Newspapers shall be determined by the board of managers of the Limited Partnership during the annual budgeting process; provided, however, that the news hole and color usage allocations will be budgeted at the same level for both *Mail* and *Gazette.* Each Newspaper may elect to publish pages in excess of their news hole and/or exceed the amount of color usage determined for such Newspapers by the Joint Venture, provided the Joint Venture has the production capacity to accommodate such excesses. However, if any of the Newspapers exceeds its budgeted news hole allocation or color usage, then any newsprint and other production costs attributable to such excess shall be borne by such Newspaper, and upon being invoiced therefor by the Joint Venture, DGHC or CPC, as appropriate, shall reimburse the Joint Venture for such expense. If, from time to time following the determination by the Joint Venture of the news hole allocation, the Joint Venture shall require a greater news hole allocation for one or more editions of one or more of the Newspapers, the Newspapers shall have no obligation to reimburse the Joint Venture for any additional expense the Joint Venture may incur as a consequence thereof, and the Joint Venture shall reimburse the Newspapers promptly upon being invoiced therefor for any additional expenses the Newspapers may incur as a consequence thereof.

(3) DGHC, independently of CPC, shall develop standards for determining the acceptability of advertising copy for publication in *Gazette* and *Gazette-Mail.* CPC, independently of DGHC and the Joint Venture, shall develop standards for determining the acceptability of advertising copy for publication in *Mail.*

(4) Except as provided otherwise herein, the term "Editorial Expense" as used in this JOA shall mean all costs and expenses associated with the news and editorial departments of each Newspaper, including but not limited to: (a) Compensation, including payroll taxes, retirement, pension, health and death benefits, worker's compensation insurance and group insurance of news and editorial employees; (b) severance pay of news and editorial employees; (c) travel and other expenses of news and editorial employees; (d) press association assessments and charges; (e) charges for news services and editorial wire services; (f) charges for the right to publish news and editorial features, daily or weekly comics and other editorial material of every kind and character; (g) the cost of news and editorial materials, printing, stationery, office supplies and postage for the news and editorial department; (h) donations; (i) the cost of editorial promotions; (j) telegraphic, telephone, long-distance telephone and internet access charges of the news and editorial departments; (k) charges for the purchase, rental, repair and maintenance of editorial department cameras and related photographic equipment (provided, however, that the term "Editorial Expense" shall not include any cost, charge or expense related to any camera or other equipment made available to the editorial departments of the Newspapers pursuant to Section V E of this JOA, or to any equipment that is an integral part of the production process even though located in the news and/or editorial department of a Newspaper, or related to any editorial department capital assets owned by either Newspaper); (l) the cost of liability insurance and insurance with respect to libel and right of privacy and similar hazards; and (m) the cost of any Charleston, West Virginia based executive-level management of *Mail.* Notwithstanding the foregoing, the following shall not be included in the term "Editorial Expense" and shall be separately borne by the Newspaper which incurs them: (i) Certain uninsured liabilities for published or excluded material as provided in Section VII B, (ii) costs for excess news hole allocation or color usage as provided in Section V H(2), (iii) costs related to material changes from present, usual or customary practices as provided in Section V H(5), (iv) any interest, indebtedness, amortization, organizational costs or other costs or expenses relating to *Mail* and (v) except as described in (m) above, any portion of any salaries, expenses, overhead or corporate allocation attributable to any non-Charleston, West Virginia based ownership, management or supervision of *Mail.*

(5) All Editorial Expense of the editorial departments of *Gazette* and *Gazette-Mail* shall be borne by DGHC, and all Editorial Expense of the editorial department of *Mail* shall be borne by CPC; provided, however, that costs resulting from any material change by any Newspaper from its present, usual or customary practices that result in additional future newsprint, production or other costs to be incurred on the part of the Joint Venture shall be borne by such Newspaper, and upon being invoiced therefor by the Joint Venture, DGHC or CPC, as appropriate, shall reimburse the Joint Venture for such costs.

I. *Accounting Matters.* The Joint Venture shall cause to be maintained full and accurate books of account and records showing all transactions hereunder. Such books and records shall be kept on the basis of a year ending December 31 and under the accounting methods currently employed by DGC in accordance with generally accepted accounting principles, and shall at all times be kept at the principal

place of business of the Joint Venture. The independent auditors of the Joint Venture shall be the independent auditors of DGC. Any changes in accounting method shall be consistent with accepted accounting principles and with changes made generally by DGC, and CPC shall receive prompt notice of any such changes that could reasonably be expected to have an adverse effect on its interests under this JOA or the Limited Partnership Agreement. CPC and its respective authorized agents or representatives shall have access to and may inspect such books and records at any time and from time to time during ordinary business hours. Statements shall be rendered and settlements under this JOA shall be made on a monthly basis on the 15th day following the end of each monthly accounting period, with annual adjustments as soon as practicable at the conclusion of each year during the term of this JOA. An annual statement shall be furnished by the Joint Venture to the Limited Partnership not later than the 31st day of March of each year, summarizing in reasonable detail and fairly reflecting the transactions and the results of operations under this JOA during the preceding year. All payments shown to be due by CPC, DGHC or the Joint Venture shall be paid within thirty (30) days after the delivery of the applicable statement.

J. *Distributions to Partners.*

(1) For each year of this JOA, the Joint Venture shall distribute to the Limited Partnership cash equal to the amount actually expended or accrued as a current liability in accordance with generally accepted accounting principles by CPC for Editorial Expenses during such year; provided, however, that the amount distributed by the Joint Venture to the Limited Partnership pursuant to this Section V J(1) shall not, in respect of any year, exceed the budgeted amount for such year determined by the Joint Venture in accordance with Section V J(8) below; and provided further that the amount to be distributed by the Joint Venture to the Limited Partnership shall be reduced by any obligation of CPC to reimburse the Joint Venture for expenses paid by the Joint Venture on behalf of CPC. The Limited Partnership shall in turn distribute such net amount to CPC.

(2) If, for any year, with the prior written concurrence of the Joint Venture, CPC makes a permanent reduction in its editorial workforce in accordance with the requirements of applicable laws, regulations and agreements, and if and to the extent the severance costs associated with such reduction are not included in CPC's applicable budgeted Editorial Expenses for such year determined in accordance with Section V J(8) below, then (a) the Joint Venture shall, in addition to the cash amounts described in subsection (1) above, distribute to the Limited Partnership in cash an amount equal to that portion of such severance costs that is reasonable and required to be incurred for such year pursuant to applicable laws, regulations or agreements, and that in any event does not exceed the costs DGHC would have incurred if DGHC had made corresponding reductions.

(3) The distributions described in subsection (1) above shall be made on a monthly basis in increments of 1/12 of the applicable budgeted amount determined by the Joint Venture, subject to adjustment by the Joint Venture at the end of each year so that such aggregate distributions for the year are in such amounts as the Joint Venture shall determine (based on such records and evidence as the Joint Venture may request from CPC) are equal to the amounts expended or accrued by CPC for such year as provided in Section V J(8), but no greater than the budgeted Editorial Expenses of *Mail* for such year. The distributions described in subsection (2) above shall also be made on a monthly basis and shall be in such amounts as the Joint Venture shall determine (based on such records and evidence as the Joint Venture may request from CPC) are equal to the amounts expended or accrued by CPC for such period within the applicable budget amounts, with such subsequent adjustment as may be appropriate.

(4) In addition to the distributions to the Limited Partnership and, in turn, to CPC provided for in Sections V J(1)–(3) above, there also shall be paid to CPC a fee for its services in the management and supervision of the news and editorial operations of the *Mail.* The management fee shall be paid on May 7 of each year during the term of this JOA (each date a "Payment Date"). The amount of the management fee payable on May 7, 2010 shall be $225,000. For each Payment Date after May 7, 2010, the management fee payable to CPC shall be $225,000 adjusted to reflect the aggregate change since May 7, 2010 in the Consumer Price Index. The "Consumer Price Index" for purposes of this JOA shall mean "The Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average for All Items, 1982–84 = 100" released by the U.S. Department of Labor, Bureau of Labor Statistics, or any similar replacement index. For each Payment Date after May 7, 2010, the management fee payable to CPC shall also be adjusted annually on a non-cumulative basis as follows:

(a) If *Mail*'s average daily paid print circulation for the most recent 12 month audited period exceeds the average daily paid print circulation for the immediately preceding 12 month audited period by more than 1%, the management fee payable on such Payment Date will be increased by $25,000.

(b) If *Mail*'s average daily paid print circulation for the most recent 12 month audited period is the same as the average daily paid print circulation for the immediately preceding 12 month audited period or if Mail's average daily paid print circulation for the most recent 12 month audited period exceeds the average daily paid print circulation for the immediately preceding 12 month audited period by 1% or less, the management fee payable on such Payment Date will be increased by $10,000.

(c) If *Mail*'s average daily paid print circulation for the most recent 12 month audited period decreases by 1% or less from the average daily paid print circulation for the immediately preceding 12 month audited period, the management fee payable on such Payment Date will be decreased by $10,000 (provided that in no event will the management fee payable on any Payment Date be reduced to an amount below $225,000).

(d) If *Mail*'s average daily paid print circulation for the most recent 12 month audited period decreases by more than 1% from the average daily paid print circulation for the immediately preceding 12 month audited period, the management fee payable on such Payment Date will be decreased by $25,000 (provided that in no event will the management fee payable on any Payment Date be reduced to an amount below $225,000).

For purposes of the adjustments described in clauses (a) through (d) above, *Mail*'s average daily paid print circulation will be determined based on 12 month audits conducted by the Audit Bureau of Circulations or other reputable third party media auditor.

(5) Except for the foregoing distributions to the Limited Partnership, and except for such cash as the Limited Partnership may from time to time determine is necessary or desirable to retain in the Joint Venture for working capital purposes, the Joint Venture shall (subject to any applicable contractual restrictions under the Joint Venture's financing arrangements) distribute all remaining cash (including without

limitation the proceeds from any sale or disposition of Joint Venture capital assets) equally to the Limited Partnership and DGPC. Such distributions shall be made from time to time as determined by the Limited Partnership, but no such distributions shall be made at any time when the Joint Venture is not current in making the distributions to the Limited Partnership and the payments to CPC described in Section V J(l) through (4) hereof.

(6) Pending the distributions contemplated by this Section V J, DGHC shall be authorized to manage the Joint Venture's cash pursuant to the corporate-wide policies of DGC.

(7) All income, gain, profits, losses, and expenses of the Joint Venture shall be allocated between the Limited Partnership and DGPC in proportion to the cash distributed to them pursuant to this Section V J.

(8) For each year of this JOA, the budgeted Editorial Expenses for *Mail* and *Gazette* shall be in amounts determined by the board of managers of DGHC and approved by at least 75% of the members of the board of managers (*i.e.,* if the board consists of four members, not fewer than three members must vote in favor, and if the board consists of five members, not fewer than four members must vote in favor); provided, however that for *Mail'*s 2010 annual Editorial Expense budget the staffing level in *Mail'*s news and editorial departments will be budgeted at thirty-two (32) full time employees. Any Editorial Expense budget may be adjusted by action of the board of managers of DGHC (subject to the 75% supermajority voting requirement) from time to time during the course of a year of this JOA to take appropriate account of developments in products or technologies, material changes in any Newspaper's editorial workforce, or other material changes which may occur relative to any Newspaper's operations or circulation in any given year.

VI. Termination

A. *Termination.*

(1) If DGHC or CPC defaults by failing to make any payment hereunder when due or by otherwise failing to fulfill in any material respect any of its obligations under this JOA and the party in default does not correct its default within ninety (90) days after receipt from the other of written notice specifying the default, then the non-defaulting party may, at its election, terminate this JOA upon ninety (90) days' prior written notice.

(2) If publication of Mail is discontinued in accordance with the terms of this JOA or the Limited Partnership is dissolved, terminated and liquidated, this JOA shall terminate.

B. *Action After Termination.*

(1) It is understood that, as soon as practicable after the termination of this JOA by lapse of time or otherwise, the Limited Partnership shall, subject to the prior satisfaction of the claims of all creditors (other than the partners of the Limited Partnership) and the payment of the fee provided in Section V J(4), distribute to CPC, the *Mail* masthead, all trademarks, copyrights, trade names, service names and service marks of the *Mail,* the *Mail* subscriber and advertiser lists, print and electronic archives of the *Mail,* associated web sites and URLs (including "dailymail.com") and all legal rights associated with these assets, subject to such dispositions, additions or substitutions relating thereto which may have occurred in the ordinary course of the operations of the Limited Partnership or the Joint Venture or in satisfaction of the claims of creditors subsequent to the formation of the Limited Partnership, including, in particular, any and all lists of subscribers to *Mail,* together with copies of any contracts with such subscribers relating to *Mail* and any executory contracts for the purchase of advertising in *Mail,* free and clear of any lien, encumbrance, right or interest (including any option or any license or other right of use) of or in favor of a third party, transfer restriction (including any right of first offer or refusal or similar provision) or any other similar right or interest whatsoever.

(2) Upon the termination of this JOA by lapse of time or otherwise, the Joint Venture shall dissolve and shall distribute its assets as follows:

(a) That portion of any distributions to which the Limited Partnership may be entitled but which has not yet been distributed for the period up to the date of termination pursuant to Section V J(1) through (3) hereof, shall be distributed to the Limited Partnership.

(b) All other assets of the Joint Venture shall be distributed equally to DGPC and the Limited Partnership.

(3) A partial accounting and partial settlement under this JOA shall be made as promptly as practicable and a final accounting and final settlement shall be made not later than the 31st day of March of the year following the year in which this JOA is terminated.

VII. Miscellaneous Provisions

A. *Certain Liabilities; Force Majeure.* Except as otherwise provided in this JOA, no party shall be charged with or held responsible for any contract, debt, claim, demand, damage, suit, action, obligation or liability arising by reason of any act or omission on the part of any other party, and no party shall be liable to any other for any failure or delay in performance under this JOA occasioned by war, riot, act of God or the public enemy, strike, labor dispute, shortage of any supplies, failure of supplier or workmen, or any cause beyond the control of the party required to perform, and such failure or delay shall not be considered a default hereunder.

B. *Liabilities for Published or Excluded Material.* The Joint Venture shall obtain insurance to insure each of the Newspapers against liability for libel and right of privacy in such amount as it deems appropriate, with the premiums for such insurance being an Editorial Expense as provided in Section V H(4). However, the entire cost and expense of defending, settling, paying and discharging any liability or other claim which is not covered by the libel insurance obtained by the Joint Venture (excluding any such cost or expense which is not covered as a result of the application of any deductible amount or co-payment requirement provided under the insurance policy) for *Gazette* and *Gazette-Mail* on account of anything published in or excluded from *Gazette* or *Gazette-Mail,* or arising by reason of anything done or omitted to be done by the editorial departments thereof, shall be borne by DGHC; and any similar cost and expense on account of anything published in or excluded from *Mail,* or arising by reason of anything done or omitted to be done by the editorial department thereof, shall be borne by CPC. DGHC and CPC each agree to indemnify and hold the other party, the Joint Venture and the Limited Partnership harmless against any cost, expense or liability which such other party, the Joint Venture or the Limited Partnership may suffer or incur as a result of any such action or inaction for which the indemnifying party is responsible as provided above.

C. *Contravention of Law.* Nothing contained in this JOA shall be construed to permit any party acting jointly or by unified action to engage in any predatory pricing, predatory practice or any other conduct which would be unlawful under any antitrust law as engaged in by any single entity. The parties hereto further mutually agree that if any part or provision of this JOA shall hereafter become, or be determined by action in any proper court to be, in contravention of law, this JOA shall not thereby be considered or adjudged to be a nullity, but that all parties shall, and each hereby agrees, immediately to take, or authorize such action to be taken, to reform this JOA,

or to modify, alter or supplement any of its provisions, as may be necessary to permit the intention and purpose of the parties hereto to be properly and lawfully carried out.

D. *Further Assurances.* From time to time on and after the date hereof, each of the parties hereto will execute all such instruments and take all such actions as the other party shall reasonably request in connection with carrying out and effectuating the intention and purpose hereof and all transactions and things contemplated by this JOA, including, without limitation, the execution and delivery of any and all confirmatory and other instruments and the taking of any and all actions which may reasonably be necessary or desirable to complete the transactions contemplated thereby.

E. *Assignments and Transfers.*

(1) Except as authorized under the Limited Partnership Agreement, CPC may not sell, assign or transfer (including any pledge or hypothecation), any of its rights or interests under this JOA or pertaining to the Joint Venture or the Limited Partnership or the Newspapers to any person without the prior written consent of DGHC, which shall not be unreasonably withheld. Without limiting the generality of the foregoing, except as authorized under the Limited Partnership Agreement, a controlling interest in the capital stock of CPC may not be sold, assigned or transferred to any person without the prior written consent of DGHC, which shall not be unreasonably withheld. No consent of DGHC shall be required for a transfer relative to the Limited Partnership or any interests therein that is expressly authorized and made in compliance with the transfer provisions under the Limited Partnership Agreement, and, the foregoing transfer restrictions shall not apply to any transfer of any right or interest under this JOA or pertaining to the Joint Venture or the Newspapers to MNG or an affiliate of MNG so long as MNG or an affiliate of MNG holds and maintains, directly or indirectly, voting control of such transferee following such transfer. CPC acknowledges and agrees that DGHC's ability to grant consent to a transfer is circumscribed by certain contractual restrictions under the Joint Venture's financing arrangements and the withholding of consent by DGHC in order to comply with these contractual restrictions will not be considered unreasonable.

(2) DGC, DGHC, the Limited Partnership, DGPC and the Joint Venture may, without the consent of CPC, sell, assign or transfer a part or all or substantially all of the assets of *Gazette* and *Gazette-Mail* as a going concern to any person and assign a part or all of their rights and obligations under this JOA to the purchaser thereof, or sell, assign or transfer part or all of their direct or indirect interests in DGHC, the Limited Partnership, DGPC and the Joint Venture to any person, so long as (1) at the time of such sale the Joint Venture is current in the distributions required to be made to the Limited Partnership and the payments required to be made to CPC pursuant to Section V J(1) through (4) hereof, and (2) the purchaser assumes (in the case of an assets sale) all of the obligations of the assignors pursuant to this JOA. In the event DGC, DGHC, the Limited Partnership, DGPC or the Joint Venture engages in an assets sale contemplated by this Section VII E, they shall, effective on the closing thereof, be released and discharged from any further liability under this JOA. No consent of CPC shall be required for (i) a pledge by DGC, DGHC, the Limited Partnership, DGPC or the Joint Venture of their rights under this JOA or their direct or indirect interests in DGHC, the Limited Partnership, DGPC and the Joint Venture to the Joint Venture's lenders for security purposes or a transfer of such interests and rights pursuant to any foreclosure action by the Joint Venture's lenders or any transfer in lieu of foreclosure.

F. *Other Ventures.* Neither DGC nor any Partner of the Limited Partnership may engage in other ventures in the Charleston, West Virginia market that are competitive with that of the Limited Partnership or any of its Subsidiaries (including the Joint Venture). For purposes of this Section VII F, any competitive venture undertaken by an affiliate of a Partner in the Charleston, West Virginia market will be deemed to be a competitive venture undertaken by such Partner.

G. *Entire Agreement.* This JOA amends and restates the Prior JVA in its entirety.

H. *Notices.* All notices, requests, demands, claims and other communications which may or are to be given hereunder or with respect hereto shall be in writing, shall be given either by personal delivery, facsimile or by certified or special express mail or recognized overnight delivery service, first class postage prepaid, or when delivered to such delivery service, charges prepaid, return receipt requested, and shall be deemed to have been given or made when personally received by the addressee, addressed as follows:

(1) If to CPC, to:

Affiliated Media, Inc., 101 W. Colfax Avenue, Suite 1100, Denver, CO 80202. Attn: Joseph J. Lodovic, IV President, Facsimile: (303) 954–6320.

With a copy to:

Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004. Attn: James Modlin, Facsimile: (212) 422–4726.

or such other addresses as CPC may from time to time designate.

(2) If to DGC, DGHC, DGPC, the Joint Venture or the Limited Partnership, to:

Daily Gazette Company, 1001 Virginia Street, East, Charleston, WV 25301. Attn: Ms. Elizabeth E. Chilton, President, Facsimile: (304) 348–5180.

And

Attn: Mr. Norman Watts Shumate III, Facsimile: (304) 348–1795.

With a copy to:

Baker & Hostetler LLP, 1050 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036. Attn: Lee H. Simowitz, Facsimile: (202) 861–1783.

or such other addresses as DGHC, DGC, DGPC, the Joint Venture or the Limited Partnership may from time to time designate.

I. *Announcements/Disclosures.* The parties agree that, except as required by law, and then only upon the maximum advance notice to the other parties which is practicable under the circumstances, they will make no public announcement concerning this JOA and the transactions contemplated hereby prior to the first mutually agreed upon announcement thereof without the consent of the other parties as to the form, content, and timing of such announcement or announcements.

J. *Headings.* Titles, captions or headings contained in this JOA are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this JOA or the intent of any provisions hereof.

K. *Governing Law.* This JOA shall be construed and enforced in accordance with the internal laws of the State of West Virginia.

L. *Modifications.* This JOA shall be amended only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge is sought (subject to any applicable contractual restrictions under the Joint Venture's financing arrangements).

M. *Specific Performance.* In addition to any other remedies the parties may have, each party shall have the right to enforce the provisions of this JOA

through injunctive relief or by a decree or decrees of specific performance.

N. *No Third Party Beneficiaries.* Nothing in this JOA, express or implied, shall give to anyone other than the parties hereto (and the parties entitled to indemnification hereunder) and their respective permitted successors and assigns any benefit, or any legal or equitable right, remedy or claim, under or in respect of this JOA.

O. *Nature of Relationship.* Nothing contained in this JOA shall constitute the parties hereto as alter egos or joint employers or as having any relationship other than as specifically provided herein and in any other agreement to which they are subject. DGHC and CPC each will retain and be responsible for (and will indemnify the other parties, the Joint Venture and the Limited Partnership against) all of their respective debts, obligations, liabilities, and commitments which have not been expressly assumed by the Joint Venture pursuant to this JOA or the Limited Partnership, or for which the Joint Venture was not already liable under the Prior JVA.

O. *Survival.* The expiration or termination of this JOA shall not abrogate the rights and obligations of the parties under Section VII(B) or any other provision of this JOA that contemplates actions to be taken after the expiration or termination of this JOA.

P. *Dispute Resolution.* The terms of *Exhibit A* attached hereto, which include provisions related to the procedures pursuant to which the parties shall resolve any disputes, claims or controversies arising under, out of or in connection with this JOA are incorporated herein by this reference as if set out herein in full.

DAILY GAZETTE COMPANY
By: _____
Title: _____

DAILY GAZETTE HOLDING COMPANY, LLC
By: Daily Gazette Company, Sole Member
By: _____
Title: _____

CHARLESTON PUBLISHING COMPANY
By: _____
Title: _____

CHARLESTON NEWSPAPERS
By: Charleston Newspapers Holdings, L.P., General Partner
By: Daily Gazette Holding Company, LLC, General Partner
By: Daily Gazette Company, Sole Member
By: _____
Title: _____

DAILY GAZETTE PUBLISHING COMPANY, LLC
By: Charleston Newspapers Holdings, L.P., Sole Member
By: Daily Gazette Holding Company, LLC, General Partner
By: Daily Gazette Company, Sole Member
By: _____
Title: _____

CHARLESTON NEWSPAPERS HOLDINGS, L.P.
By: Daily Gazette Holding Company, LLC, General Partner
By: Daily Gazette Company, Sole Member
By: _____
Title: _____

Exhibit A to Amended and Restated Joint Operating Agreement

Dispute Resolution

(a) Any dispute, claim or controversy arising under, out of, in connection with or relating to this JOA, or any course of conduct, course of dealing, statements (oral or written), or actions of any party relating to this JOA, including any claim based on or arising from an alleged tort (each, a "Dispute"), shall be resolved solely in the following manner:

(i) Pre-arbitration procedures.

(A) Each party shall cause one of its senior officers to first meet with the other party's senior officer and attempt to resolve the Dispute by agreement.

(B) Failing resolution, either party may submit to the other party a written request for non-binding mediation. Within ten (10) business days after such written request is made, the parties shall attempt to agree on a single mediator. If the parties cannot agree on a mediator within such period, either party may proceed to implement the arbitration provisions of clause (a)(ii) below.

(C) Mediation shall take place at the place or places and at the time or times set by the mediator, but shall not be held in public. The rules of procedure, evidence and discovery with respect to any mediation shall be as directed by the mediator. Neither party may be represented at hearings before the mediator by an attorney but the parties may consult with counsel outside the hearing room and counsel may assist in preparing any written materials to be used in the mediation, including statements and briefs.

(D) The mediator shall facilitate communications between the parties and assist them in attempting to reach a mutually acceptable resolution of the Dispute by agreement. The mediator shall make no binding determinations, findings, or decisions.

(E) The mediator's expenses shall be borne equally by the parties.

(F) At any point in the mediation process after the initial meeting with the mediator, either party may declare in writing that an impasse exists, and thereafter either party may proceed to implement the arbitration provisions of clause (a)(ii) below. If the parties have not resolved their dispute pursuant to the provisions of this clause (a)(i) within thirty (30) days after appointment of the mediator, the parties shall immediately proceed to implement the arbitration provisions of clause (a)(ii) below.

(ii) Arbitration.

(A) All Disputes between the parties that are not resolved under clause (a)(i) above shall be finally resolved by arbitration in accordance with the rules of JAMS (or its successor) described below, subject to the limitations of this clause (a)(ii).

(B) Except as provided in clause (a)(ii)(C), with respect to a Dispute in which the claim, counterclaim or amount in controversy does not exceed Two Hundred Fifty Thousand Dollars ($250,000) (a "Minor Dispute"), a single arbitrator shall decide the Minor Dispute in accordance with the JAMS Streamlined Arbitration Rules and Procedures then in effect (the "Streamlined Rules"). In the event the parties are unable to agree upon an arbitrator, the arbitrator shall be appointed by JAMS under the Streamlined Rules. The arbitrator shall determine the Minor Dispute in accordance with the terms of this JOA and the laws designated in Section VII K of the JOA and shall have authority to render a maximum award of Two Hundred Fifty Thousand Dollars ($250,000), including all damages of any kind and costs, fees and the like.

(C) With respect to a Dispute in which (x) the claim, counterclaim or amount in controversy exceeds Two Hundred Fifty Thousand Dollars ($250,000), or (y) the resolution of the Dispute may give a party a right to terminate this JOA ("Major Dispute"), any such Major Dispute shall be decided by a majority vote of three arbitrators. In the event the parties are unable to agree on the three arbitrators, the three arbitrators shall be appointed by JAMS under the JAMS Comprehensive Arbitration Rules and Procedures then in effect (the "Comprehensive Rules"). The three arbitrators shall determine the Major Dispute in accordance with the terms of this JOA and the laws designated in Section VII K of this JOA. The majority of the three arbitrators may grant any award, remedy or relief ("Award") that they deem just and equitable and within the scope of this JOA. The majority of

the arbitrators may also grant such ancillary relief as is necessary to make effective the Award, including injunctive relief and/or specific performance. In all arbitration proceedings in connection with a Major Dispute, the arbitrators shall make specific, written findings of fact and conclusions of law. In all Major Disputes, the parties shall, in addition to the limited statutory right to seek vacation or modification of any Award pursuant to applicable law, have the right to seek vacation or modification of any Award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any application for vacation or modification of an Award based on an incorrect ruling of law must be filed in a court having jurisdiction pursuant to clause (c) below within thirty (30) days from the date the Award is rendered. The findings of fact made by the arbitrators shall be binding on all parties and shall not be subject to further review except as otherwise allowed by applicable law.

(D) The non-prevailing party, as determined by the arbitrator or arbitrators, shall be required to pay all of the arbitrator's fees and shall reimburse the prevailing party for any advances made by such party in respect of such fees.

(E) The arbitrator(s) shall not have the power to award (i) damages inconsistent with this JOA or (ii) punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrator(s) have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter under the law designated in Section VII K of this JOA.

(F) The arbitrator(s) shall have the authority to order the parties to produce documents or things for inspection and to provide appropriate discovery to each other, including the depositions of witnesses and the exchange of expert reports.

(G) Neither the parties nor any arbitrator may disclose the existence, content or results of the arbitration, except as necessary to enforce an Award or comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford these parties a reasonable opportunity to protect their interests.

(H) Except as otherwise provided in clause (a)(ii)(C) above, the result of the arbitration will be binding on the parties, and judgment on the arbitrator's Award may be entered in a court designated in clause (c) below.

(I) At the request of either party, arbitration proceedings shall include an oral hearing for the presentation of oral testimony and oral argument. Written presentations may also be received. The parties shall have the right to cross-examine witnesses, if requested. The arbitrator(s) shall have the authority to administer oaths and to issue orders requiring the presence of witnesses at the hearing if consistent with the law designated in Section VII K of this JOA, or to apply to a court designated in clause (c) below to issue such orders.

(J) All arbitration hearings will be commenced within sixty (60) days of demand for arbitration by any party, provided, upon a showing of cause, the arbitrator or arbitrators may extend the commencement of such hearing for up to an additional thirty (30) days.

(b) Limitations on Arbitration Requirement.

(i) No provision of, nor the exercise of any rights under, this JOA regarding arbitration shall limit the right of either party to join the other party in litigation in the event of any litigation or proceeding commenced by any third party against a party to this JOA in which the other party is an indispensable party or potential third party defendant (*e.g.,* where such other party may be obligated to indemnify the defendant in such third party action).

(ii) No provision of, nor the exercise of any rights under, this JOA regarding arbitration shall limit the right of either party to seek provisional or ancillary judicial remedies with respect to any Dispute, such as preliminary injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during or after the pendency of any arbitration. The institution and maintenance of an action for such judicial remedies shall not constitute a waiver of the right of any party, including the claimant in such action, to submit to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(iii) Nothing in this JOA shall be deemed to limit applicability of any otherwise applicable statutes of limitation and any waivers contained in this JOA. No provision in this Exhibit regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in this Exhibit for arbitration of any Dispute.

(c) WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING RELATING TO ANY AWARD OR ANY ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING, TO COMPEL ARBITRATION OF ANY DISPUTE TO WHICH THIS EXHIBIT APPLIES, AND FOR ANY OTHER MATTER SO DESIGNATED IN THIS EXHIBIT, EACH PARTY IRREVOCABLY (1) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL COURT OR WEST VIRGINIA STATE COURT SITTING IN THE CITY OF CHARLESTON IN THE STATE OF WEST VIRGINIA, (2) WAIVES ANY OBJECTION THAT IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH COURT, (3) WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, (4) WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO ANY SUCH CLAIM, SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER THE PARTY, AND (5) WAIVES ALL RIGHT TO TRIAL BY JURY.

Put/Call Agreement

PUT/CALL AGREEMENT, dated as of _____ (the "*Effective Date*"), among DAILY GAZETTE HOLDING COMPANY, LLC, a limited liability company organized under the laws of the State of Delaware ("*DGHC*"); CHARLESTON NEWSPAPERS HOLDINGS, L.P., a limited partnership organized under the laws of the State of Delaware (the "*Limited Partnership*"); and _____, a _____ (the "*Class B Partner*").

Recitals

Whereas, the parties desire to enter into this Agreement to set forth certain agreements with respect to the Class B Partner's ownership of its Class B Limited Partner Units, including put rights and call rights;

Now, Therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the parties agree as follows:

Article I

Definitions

1.1 *Definitions.* The following terms used in this Agreement have the

meanings given such terms in this Section 1.1:

"*Affiliate*" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such first-named Person.

"*Agreement*" means this Put/Call Agreement, as it may be amended, restated, modified or supplemented from time to time in accordance with its terms.

"*Buyer*" has the meaning given such term in Section 3.1(a).

"*Call*" has the meaning given such term in Section 5.1(b).

"*Call Notice*" has the meaning given such term in Section 5.1(b).

"*Class B Limited Partner*" has the meaning given such term in Section 1.1.12 of the Limited Partnership Agreement.

"*Class B Limited Partner Unit*" has the meaning given such term in Section 1.1.14 of the Limited Partnership Agreement.

"*CPC*" means Charleston Publishing Company, a Delaware corporation.

"*DGC*" means Daily Gazette Company, a corporation organized under the laws of the State of West Virginia.

"*DGHC*" has the meaning given such term in the Preamble.

"*Drag-Along Notice*" has the meaning given such term in Section 4.1(a).

"*Drag-Along Right*" has the meaning given such term in Section 4.1(a).

"*Election Notice*" has the meaning given such term in Section 6.1.

"*Fair Market Value of the Partnership*" has the meaning given such term in Section 5.2.3 of the Limited Partnership Agreement.

"*General Partner*" means DGHC and any successor General Partner.

"*General Partner Unit*" has the meaning given such term in Section 1.1.18 of the Limited Partnership Agreement.

"*JOA*" means the Second Amended and Restated Joint Operating Agreement dated as of the date hereof, by and among DGC, DGHC, the Joint Venture, the Limited Partnership, Daily Gazette Publishing Company, LLC, a Delaware limited liability company, and CPC.

"*Joint Venture*" means Charleston Newspapers, a West Virginia unincorporated joint venture.

"*Limited Partnership Agreement*" means that certain Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings, L.P. dated as of _____, 2009, by and among DGHC and CPC, as such agreement may be amended, restated, modified or supplemented from time to time in accordance with its terms.

"*New Units*" means any Units offered by the Limited Partnership after the date of this Agreement.

"*Partner*" means any Person admitted as a Partner of the Limited Partnership in accordance with the provisions of the Limited Partnership Agreement.

"*Permitted Transferee*" means any other Person that directly or indirectly succeeds to any or all of its Class B Limited Partner Units in accordance with the provisions of this Agreement and Article VI of the Limited Partnership Agreement and is admitted as a Partner in accordance with the provisions of Article VI of the Limited Partnership Agreement.

"*Person*" means any individual, general partnership, limited partnership, corporation, limited liability company, limited liability partnership, joint venture, trust, business trust, cooperative, association, governmental agency or a division or subdivision of any of the foregoing, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

"*Pro Rata Portion*" means the Class B Partner's Percentage Interest in the Limited Partnership (as defined in the Limited Partnership Agreement).

"*Residual Class B Partner Percentage*" means, as of any date, the percentage of the aggregate distributions by the Limited Partnership to the General Partner and the Class B Partner that the Class B Partner would be entitled to receive under Section 7.3 of the Limited Partnership Agreement if (i) the Limited Partnership were to sell its assets at the Fair Market Value of the Partnership, (ii) income, gain, loss and deduction arising from such sale were allocated among the Partners in accordance with Section 5.2.3 of the Limited Partnership Agreement, but without giving effect to any allocation of income or gain attributable to the Tax Gross-Up Amount (as defined in the Limited Partnership Agreement), and (iii) the Limited Partnership were then liquidated on such date, taking into account all unrealized appreciation or decline in value of the assets of the Limited Partnership, and assuming all reserves were distributed.

"*Subsidiary*" means any Person (including the Joint Venture) that is controlled by the Limited Partnership.

"*Tax-Adjusted Residual Class B Partner Percentage*" means, as of any date, the percentage of the aggregate distributions by the Limited Partnership to the General Partner and the Class B Partner that the Class B Partner would be entitled to receive under Section 7.3 of the Limited Partnership Agreement if (i) the Limited Partnership were to sell its assets at the Fair Market Value of the Partnership, (ii) income, gain, loss and deduction arising from such sale were allocated among the Partners in accordance with Section 5.2.3 of the Limited Partnership Agreement, and (iii) the Limited Partnership were then liquidated on such date, taking into account all unrealized appreciation or decline in value of the assets of the Limited Partnership, and assuming all reserves were distributed.

"*Taxes*" means any and all taxes, fees, duties, tariffs, imposts and other charges of any kind imposed by any government or taxing authority, including, without limitation: federal, state, local, or foreign income, gross receipts, windfall profits, severance, property, ad valorem, sales, use, license, excise franchise, capital, transfer, recordation, employment, withholding, or other tax or governmental assessment.

"*Tax Interest*" means any interest, additions, or penalties with respect to Taxes and any interest in respect of such additions or penalties.

"*Unit*" means an undivided share of the interests in the Limited Partnership of all the Partners, which include the General Partner Units and Class B Limited Partner Units.

"*Unpaid Tax Liabilities*" means the sum of (i) all unpaid Transfer Tax Liabilities, plus (ii) all unpaid Taxes of the Class B Partner due and owing (but, in the case of any Tax attributable to income or gain allocated to the Class B Partner by the Limited Partnership, only to the extent that such Tax would have been paid by the Class B Partner if the Class B Partner had used the full amount of all distributions received by it from the Limited Partnership after such Tax became due and payable to pay such Tax and all other Taxes arising thereafter), plus Tax Interest attributable thereto.

Article II

Restriction on Transfer

2.1 *Restriction on Transfer of Class B Limited Partner Units.*

(a) *Permitted Transfer.* Except as otherwise specifically provided in Section 2.1(c), the Class B Partner shall have the right to sell, exchange, transfer, pledge, hypothecate, assign or otherwise dispose of (any of the foregoing transactions referred to herein as a "*Transfer*") all or any part of its Class B Limited Partner Units to any Person.

(b) *Transfer to an Affiliate.* The Class B Partner shall be permitted to Transfer its Class B Limited Partner Units to an Affiliate of the Class B Partner and to assign its Class B Limited Partner Units

and its rights under this Agreement as collateral security to Persons extending financing to such Limited Partner or any of their Affiliates (and such Persons may at any time foreclose on such security interest).

(c) *Restriction on Transfer.* Notwithstanding anything contained in Sections 2.1(a) or 2.1(b) to the contrary, the Class B Partner shall not have the right to Transfer all or any part of its Class B Limited Partner Units to any Person that is, or that is an Affiliate of a Person that is, a publisher of a general circulation daily newspaper (other than a newspaper published by the Joint Venture) whose principal newsroom is located in Kanawha County, West Virginia, or Putnam County, West Virginia; provided, however, that the foregoing restriction shall not apply to a publisher of a general circulation daily newspaper with a circulation market share in Kanawha and Putnam Counties of 5% or less. Any Transfer that is made in violation of this Section 2.1(c) shall not be permitted and shall be null and void for all purposes.

(d) *Transfer Tax Liabilities.* Upon a Transfer of any Class B Limited Partner Units by the Class B Partner pursuant to this Section 2.1, the Class B Partner and/or the transferee of such Class B Limited Partner Units shall be liable for all Taxes and Tax Interest, resulting from such Transfer ("*Transfer Tax Liabilities*") and shall not be entitled to receive any tax distributions under the Limited Partnership Agreement in respect thereof (provided that this Section 2.1(d) shall not affect the Class B Partner's rights to receive distributions in accordance with the Limited Partnership Agreement).

(e) *Transfer in Compliance with the Limited Partnership Agreement; Agreement to be Bound by this Agreement.* No Transfer may be made pursuant to this Section 2.1 unless such Transfer is also made in accordance with Article VI of the Limited Partnership Agreement and, without limiting the generality of the foregoing, the transferee of any Class B Limited Partner Units pursuant to this Section 2.1, if not already a party to this Agreement, shall execute and deliver an agreement to the General Partner by which it agrees to become a party to this Agreement, assume all of the obligations hereunder of its transferor with respect to the Class B Limited Partner Units transferred to it and be bound by the terms and conditions hereof in the same manner as the transferor with respect to such Units. Without limiting the generality of the foregoing, any and all Class B Limited Partner Units transferred pursuant to this Section 2.1 shall remain subject to, and shall enjoy the rights under, the Tag-Along Right, Drag-Along Right, Put and Call provisions set forth in Articles III, IV and V hereof and the Class B Limited Partner shall continue to have the Class B Partner Board Right set forth in Article VII hereof and the Limited Partnership Agreement. No Transfer may be made pursuant to this Section 2.1 unless such Transfer is also made in accordance with all applicable laws, including federal and state securities laws.

Article III

Tag-Along Rights

3.1 *Tag-Along Rights*

(a) If the General Partner proposes to Transfer any General Partner Units ("*Transferor Units*"), to one or more Persons who is not an Affiliate of the General Partner (each such Person, a "*Buyer*"), then, as a condition to such transfer, the General Partner shall cause the Buyer to include an offer (the "*Tag-Along Offer*") to the Class B Partner to purchase from the Class B Partner, at the option of the Class B Partner, that number of Class B Limited Partner Units as determined in accordance with Section 3.1(b), on the same terms and conditions as are applicable to the Transferor Units (with the portion of the purchase price payable to the Class B Partner being the aggregate amount of the purchase price for all Units included in such sale multiplied by the Tax-Adjusted Residual Class B Partner Percentage). The General Partner shall provide a written notice (the "*Tag-Along Notice*") of the Tag-Along Offer to the Class B Partner, which may accept the Tag-Along Offer by providing a written notice of acceptance of the Tag-Along Offer to the General Partner within thirty (30) days of the delivery of the Tag-Along Notice. Subject to Section 3.1(e), if the Class B Partner fails to accept a Tag Along Offer within thirty (30) days of delivery of the Tag-Along Notice, the Class B Partner shall cease to have any rights hereunder with respect to such Tag-Along Offer.

(b) The Class B Partner shall have the right (a "*Tag-Along Right*") to sell pursuant to the Tag-Along Offer the percentage of its Class B Limited Partner Units then held equal to the percentage of General Partner Units proposed to be sold by the General Partner (which percentage of General Partner Units may be reduced in the sole discretion of the General Partner and the Buyer).

(c) The Class B Partner's Tag-Along Right shall not apply to any (i) pledge by the General Partner of Units for security purposes under any bona fide loan transaction; (ii) Transfer of Units pursuant to a foreclosure action under any bona fide loan transaction; or (iii) Transfer of Units by the General Partner to an Affiliate. If the General Partner Transfers any General Partner Units to an Affiliate of the General Partner, such Affiliate transferee shall become a party to and be bound by the terms of this Agreement to the same extent as the General Partner.

(d) If the Class B Partner fails to accept a Tag-Along Offer within thirty (30) days of delivery of the Tag-Along Notice, the Buyer shall have one hundred twenty (120) days, commencing on the thirtieth (30th) day after delivery of the Tag-Along Notice to the Class B Partner, in which to purchase on terms no more favorable to the transferor than the terms set forth in the Tag-Along Offer from the General Partner the number of Transferor Units with respect to which the Tag-Along Notice was delivered. If such purchase and sale is not consummated on terms no more favorable to the transferor than the terms set forth in the Tag-Along Offer within such one hundred twenty (120) day period, any Transfer of the Transferor Units shall again be subject to the provisions of this Section 3.1.

(e) The provisions of this Section 3.1 shall apply to a sale of any membership interest in the General Partner to the same extent as such provisions apply to a sale of Units by the General Partner.

Article IV

Drag-Along Rights

4.1 *Drag-Along Rights.* In the event the General Partner proposes to Transfer all of its General Partner Units for cash, in a single transaction or a series of related transactions, to a Person that is not an Affiliate of the General Partner, the General Partner shall have the right (the "*Drag-Along Right*") to cause the Class B Partner to sell all of its Class B Limited Partner Units to such Person on the same terms and conditions as the General Partner proposes to Transfer its General Partner Units (with the portion of the purchase price payable to the Class B Partner being the aggregate amount of the purchase price for all Units included in such sale multiplied by the Tax-Adjusted Residual Class B Partner Percentage). The General Partner may exercise its Drag-Along Right by giving written notice of such exercise (the "*Drag-Along Notice*") to the Class B Partner not fewer than ten (10) days prior to the consummation of the Transfer that is the subject of the Drag-Along Right. The Drag-Along Notice shall contain a copy of any definitive documentation pursuant to which

Transfer is to be made and will state the name and address of the purchaser and the anticipated closing date of such Transfer. Upon delivery of the Drag-Along Notice, the Class B Partner shall be obligated to Transfer and deliver its Class B Limited Partner Units on the terms and conditions applicable to the Transfer and shall use commercially reasonable efforts to cooperate in the Transfer and take all necessary actions to enter into appropriate Transfer or transaction documents. The Class B Partner's indemnification obligations under the transaction documents governing a Transfer pursuant to this Section 4.1 shall be limited to the amount of any portion of the proceeds paid for the Class B Limited Partner Units sold in such transaction that is held in escrow for such purpose and not paid to the Class B Partner, such transaction documents shall not require the Class B Partner to make any representations other than those with respect to the Class B Partner's ownership of and its ability to Transfer the Class B Limited Partner Units to be sold in such transaction and any indemnification obligations shall be limited to breach of such representations only.

Article V

Put and Call Rights

5.1 *Put and Call Rights.*

(a) *Class B Partner Put Right.* Upon the cessation of the publication of *The Charleston Daily Mail,* the Class B Partner shall be required to sell to the General Partner (or an Affiliate or designee thereof) and the General Partner (or an Affiliate or designee thereof), shall be required, subject to the terms and conditions set forth in this Agreement, to purchase from the Class B Partner all, but not less than all, of the Class B Limited Partner Units. Additionally, at any time from and after the termination of the JOA by lapse of time or otherwise and/or dissolution and/or termination of the Joint Venture or upon the occurrence of any event which constitutes or results in a Change of Control (as defined below) of the Joint Venture, the Class B Partner shall have the right to sell to the General Partner (or an Affiliate or designee thereof) and the General Partner (or an Affiliate or designee thereof), shall be required, subject to the terms and conditions set forth in this Agreement, to purchase from the Class B Partner all, but not less than all, of the Class B Limited Partner Units. The obligation or right to sell and obligation to buy set forth in the preceding two sentences shall be referred to herein as the "*Put*". With respect to the Put described in the second sentence of this Section 5.1(a), if the Class B Partner elects to exercise the Put, it shall send written notice thereof to the General Partner (the "*Put Notice*)". The General Partner's designation of an Affiliate or other designee to purchase the Class B Limited Partner Units in connection with the exercise of the Put will not relieve the General Partner of its obligations hereunder. For purposes of this Section, "Change of Control" means any event, transaction or occurrence as a result of which DGC ceases to control the General Partner, and "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(b) *General Partner Call Right.* At any time from and after the termination of the JOA by lapse of time or otherwise and/or the dissolution and/or termination of the Joint Venture, the General Partner (or an Affiliate or designee thereof) shall have the right to purchase from the Class B Partner, and the Class B Partner shall be required, subject to the terms and conditions set forth in this Agreement, to sell to the General Partner (or an Affiliate or designee thereof), all, but not less than all, of the Class B Limited Partner Units (such right to purchase, the "*Call*". If the General Partner elects to exercise the Call, it shall send written notice thereof to the Class B Partner (the "*Call Notice*").

(c) *Purchase Price.* The purchase price to be paid to the Class B Partner upon the exercise of the Put or Call (the "*Put/Call Purchase Price*") shall be equal to (A) the amount that would be distributed to the Class B Partner under Section 7.3 of the Limited Partnership Agreement if the Limited Partnership were to sell its assets on the Put/Call Closing Date for the Fair Market Value of the Partnership and the income, gain, loss and deduction arising from such sale were allocated among the Partners in accordance with Section 5.2.3 of the Limited Partnership Agreement, but without giving effect to any allocation of income or gain attributable to the Tax Gross-Up Amount (as defined in the Limited Partnership Agreement), and the Limited Partnership were then liquidated in accordance with Article VII of the Limited Partnership Agreement on the Put/Call Closing Date, minus (B) the amount of any Unpaid Tax Liabilities or other outstanding liabilities of the Class B Partner (other than liabilities for Taxes and Tax Interest). The Fair Market Value of the Partnership shall be determined as of the Put/Call Closing Date by mutual agreement of the General Partner and the Class B Partner or by appraisals in accordance with the terms hereof. In the event the General Partner and the Class B Partner do not agree on the Fair Market Value of the Partnership within twenty days, then within fifteen days of the expiration of such twenty-day period (or such longer period as the General Partner and the Class B Partner mutually agree), each of the General Partner and the Class B Partner shall select a nationally recognized appraiser with experience in the newspaper industry to prepare, using the methodology described in Exhibit A attached hereto, a written appraisal setting forth such appraiser's determination of the Fair Market Value of the Partnership. If either the General Partner and the Class B Partner fail to so appoint an appraiser within such fifteen-day period, then its right to do so shall lapse and the appraisal made by the one appraiser who is timely appointed shall be the Fair Market Value of the Partnership. If two appraisals are made, unless the higher of the two appraisals is more than 110% more than the lower appraisal, the Fair Market Value of the Partnership will be the average of the two appraisals, and if the higher of the two appraisals is more than 110% more than the lower of the appraisals, the General Partner and the Class B Partner shall jointly select a third appraiser, and the Fair Market Value will be the average of the two of the three appraisals that are closest together in amount. All appraisals will be made within twenty days of appointment of such appraiser and must separately identify the amount of each of the items described in clauses (i) through (vi) of Section 5.2.3(b) of the Limited Partnership Agreement. A written notice of the results of each such appraisal shall be given to the General Partner and the Class B Partner. The General Partner and the Class B Partner will each pay the fees of the appraiser selected by it, and the General Partner and the Class B Partner will share equally the fees of the third appraiser, if any. The General Partner and each Member will cooperate fully with each appraiser's attempt to determine the Fair Market Value of the Partnership.

(d) *Closing.* The closing of the transaction pursuant to the exercise of the Put or Call, as the case may be, shall take place at the principal offices of the Limited Partnership no later than the thirtieth (30th) day following the final determination of the Put/Call Purchase Price; provided that such date shall be extended as necessary and for so long as

necessary to permit the parties to comply with applicable law to obtain all regulatory approvals, if any, necessary to consummate such transaction (such 30th day, as it may be extended, the "*Put/Call Closing Date*"). The General Partner shall be responsible (solely at the General Partner's expense) for obtaining all approvals and consents necessary to permit the General Partner and Class B Partner to consummate such transactions (other than any such approvals or consents that are unique to the Class B Partner). Each party agrees to use its commercially reasonable efforts to cooperate in obtaining any regulatory approvals necessary to consummate such transaction as promptly as possible. If the closing of the transaction pursuant to the exercise of the Put has not occurred by the tenth (10th) day after the Put/Call Closing Date, the General Partner shall pay to the Class B Partner at the closing interest in an amount equal to 14.5% of the Put/Call Purchase Price accruing daily on the basis of a 360-day year and compounding at the end of each 90-day period after the Put/Call Closing Date. At the closing of the Put or Call, as the case may be, the General Partner shall pay the Put/Call Purchase Price and any interest accrued thereon to the Class B Partner in cash or immediately available funds and the Class B Partner shall deliver instruments, in form and substance reasonably satisfactory to the General Partner, assigning all of its interest in the Class B Limited Partner Units to the General Partner free and clear of all liens, claims and encumbrances of any nature whatsoever (other than those arising under this Agreement, the Limited Partnership Agreement or the JOA or in favor of any lender(s) to the Limited Partnership or any of its Subsidiaries) against payment of the Put/Call Purchase Price therefor.

Article VI

Preemptive Rights

6.1 *Class B Partner Preemptive Rights.* Prior to issuing any New Units to any Person ("*New Unit Offerees*"), the Limited Partnership shall offer (the "*New Unit Offer*") the Class B Partner an opportunity to purchase all or a portion of its Pro Rata Portion of such New Units upon the same terms and conditions offered to the New Unit Offerees, The Limited Partnership shall make such New Unit Offer by providing the Class B Partner with notice (the "*New Unit Notice*") setting forth: (i) The Class B Partner's Pro Rata Portion of such New Units; (ii) the consideration to be paid for each of the New Units; and (iii) all other material terms of such New Units. The Class B Partner may elect to accept the New Unit Offer by delivering written notice of its acceptance to the Limited Partnership within thirty (30) days after delivery of the New Unit Notice (the "*Election Notice*") setting forth the number of New Units the Class B Partner wishes to purchase. If the Class B Partner elects to purchase all or a portion of its Pro Rata Portion of such New Units, the sale thereof shall be consummated on the closing date applicable to all New Unit Offerees. In the event the Class B Partner elects not to exercise its right pursuant to this Section 6.1, fails to timely give an Election Notice or fails to purchase the New Units allocated to it at the closing designated therefor by the Limited Partnership, the Class B Partner shall cease to have any rights hereunder with respect to such New Unit Offer, provided that if there is any material change to the terms of the New Unit Offer following such non-exercise or failure, the Class B Partner's rights under this Section 6.1 will be reinstated.

6.2 *Issuance of New Units.* In the event the Limited Partnership issues any New Units for no consideration or for consideration which is less than the fair market value of such New Units at the time of sale (as mutually determined by the General Partner and the Class B Partner or if the General Partner and Class B Partner cannot agree, pursuant to an appraisal process similar to the process set forth in Section 5.1(c) and at the Limited Partnership's expense) and the New Units are entitled to a portion of the net equity value of the Limited Partnership on liquidation and/or distributions under the Limited Partnership Agreement, then the Limited Partnership Agreement shall be amended to change the terms of the Class B Limited Partner Units so that, after giving effect to such amendment, the value of the net equity of the Limited Partnership and distributions by the Limited Partnership to which the Class B Partner is entitled by virtue of its ownership of Class B Limited Partner Units is the same as the value of the net equity of the Limited Partnership and distributions by the Limited Partnership to which the Class B Partner was entitled prior to giving effect to such issuance and such amendment (the intention of the parties being such amendment will afford the Class B Partner a benefit of the type afforded by a customary weighted-average antidilution adjustment). The parties will act in good faith to agree upon and execute such amendment to the Limited Partnership Agreement, which shall also provide for additional distributions to be paid to the Class B Partner on the date such amendment becomes effective in order to give effect to the terms of such amendment with respect to distributions (if any) made by the Limited Partnership after such issuance but prior to such amendment becoming effective.

6.3 *Termination of Preemptive Rights.* The Class B Partner's preemptive rights pursuant to this Article VI shall terminate upon the completion of a successful underwritten public offering by the Limited Partnership (or any corporate successor thereto).

6.4 *Application of Article VI to Joint Venture.* The provisions of this Article VI shall apply mutatis mutandis if the Joint Venture or any other Subsidiary of the Limited Partnership issues any new equity interests (other than any such equity interest issued to the Limited Partnership or another Subsidiary or the Limited Partnership).

Article VII

DGHC Board Representation

7.1 *Class B Partner Board Representation.* The Class B Partner (together with any other Class B Limited Partners) shall have the right to appoint two (2) members to the board of managers of DGHC or such greater number as required by Section 5(b)(ii) of the Operating Agreement of DGHC (the "*Class B Partner Board Right*"), which board of managers shall be governed by the Limited Partnership Agreement and the Operating Agreement of DGHC attached hereto as Exhibit B. The board of managers shall consist of up to five individual managers and in no event may the board of managers consist of more than five managers without the consent of the managers appointed by the Class B Partner(s) pursuant to Section 5(b) of the Operating Agreement of DGHC; provided, however, that in no event may the board of managers consist of more than five managers unless not fewer than forty percent (40%) of the managers are appointed by the Class B Partner(s) pursuant to Section 5(b) of the Operating Agreement of DGHC. If there is more than one Class B Limited Partner, then the Class B Partner Board Right will be vested solely in the Class B Limited Partner that supervises editorial and reportorial functions of the *The Charleston Daily Mail* pursuant to Section 9.1 of the Limited Partnership Agreement. In no event may the Class B Limited Partner(s) appoint as members to the board of managers of DGHC any person who is, at the time of his or her appointment, an employee of the Joint Venture, DGC, DCHC, the Limited

Partnership or Daily Gazette Publishing Company, LLC.

Article VIII

Miscellaneous

8.1 *Registration Rights.* The parties agree that prior to the consummation of any public offering of the Limited Partnership (or any corporate successor thereto), the parties will agree on a registration rights agreement which will include one demand registration and an unlimited number of piggyback registrations with respect to the Class B Partner's securities of the Limited Partnership (or any corporate successor thereto), in each case, at the Limited Partnership's (or any corporate successor thereto's) expense, containing customary terms and conditions and otherwise in form and substance reasonably acceptable to the parties.

8.2 *Assignment.* This Agreement shall be binding upon and inure only to the benefit of and be enforceable against the parties hereto and their respective permitted successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement. The Class B Partner may assign this Agreement and such party's rights hereunder to any Permitted Transferee hereunder. The General Partner may assign this Agreement and its rights hereunder to any of its Affiliates, to a successor General Partner or as collateral for a loan or other financing; provided that no such assignment shall release the General Partner from any obligation hereunder.

8.3 *Amendment.* This Agreement may not be amended except by a written instrument signed by the General Partner, the Limited Partnership and the Class B Partner.

8.4 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without regard to its conflicts of law principles.

8.5 *Notices.* All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered if delivered by hand, by telecopier device or by overnight courier service to the parties at the following addresses:

If to General Partner:

c/o Daily Gazette Company, 1001 Virginia Street, East, Charleston, WV 25301. Attn: Ms. Elizabeth E. Chilton, President, Facsimile: (304) 348–5180; and Attn: Mr. Norman Watts Shumate III, Facsimile: (304) 348–1795.

With A Copy to:

Edmondson + Blumenthal PLLC, 12 Cadillac Drive, Suite 210, Brentwood, TN 37027. Attn: Steven E. Blumenthal Facsimile: (615) 296–4600.

If to Class B Partner:

[insert notice information]

8.6 *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

8.7 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

8.8 *Headings.* The section headings used in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of any term or provision of this Agreement.

8.9 *Integration.* This Agreement (together with the Limited Partnership Agreement and the JOA) represents the entire understanding of the parties with reference to the matters set forth herein. This Agreement supersedes all prior negotiations, discussions, correspondence, communications and prior agreements among the parties relating to the subject matter herein.

IN WITNESS WHEREOF, the parties have caused this Put/Call Agreement to be duly executed as of the date first above written.

DAILY GAZETTE HOLDING COMPANY, LLC

By: Daily Gazette Company, its sole member

By:

Name:

Title:

CHARLESTON NEWSPAPERS HOLDINGS, L.P.

By: Daily Gazette Holding Company, LLC, its general partner

By: Daily Gazette Company, its sole member

By:

Name:

Title:

[insert name of Class B Partner]

By:

Name:

Title:

DAILY GAZETTE COMPANY (solely for the purposes of Article VII)

By:

Name:

Title:

Exhibit A

Appraisal Methodology

In determining the Fair Market Value, the appraiser will use the following methodology:

The appraiser shall determine the Fair Market Value of the Partnership based on the going concern value of the Partnership as of the relevant date. In determining the Partnership's going concern value, the appraiser (i) shall assume that the value of any business is the cash price at which the assets of such business as a going concern would change hands between a willing buyer and a willing seller (neither acting under compulsion) in an arms-length transaction, on terms and subject to conditions and costs applicable in the newspaper publishing industry, (ii) shall assume that all assets used in the operation of the business of the Partnership and its Subsidiaries, whether owned by or licensed to the Partnership or any of its Subsidiaries (and all other assets of any Affiliate of the Partnership that are used by the Partnership or any of its Subsidiaries), were entirely owned directly by the Partnership, and (iii) shall not take into account expenditures in respect of any management agreements entered into by the Joint Venture.

Exhibit B

Operating Agreement of DGHC

NEITHER THIS WARRANT NOR THE CLASS B LIMITED PARTNER UNITS TO BE ISSUED UPON EXERCISE HEREOF HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). NO SALE OR OTHER DISPOSITION OF THIS WARRANT OR THE CLASS B LIMITED PARTNER UNITS ISSUABLE UPON EXERCISE HEREOF MAY BE MADE WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT. THIS WARRANT IS

ALSO SUBJECT TO CERTAIN ADDITIONAL TRANSFER RESTRICTIONS PROVIDED FOR HEREIN.

Charleston Newspapers Holdings, L.P.

Warrant To Purchase Class B Limited Partner Units Initially Constituting a 20% Percentage Interest

This certifies that Charleston Publishing Company, a Delaware corporation ("Holder"), is entitled to subscribe for and purchase from Charleston Newspapers Holdings, L.P., a Delaware limited partnership (hereinafter, the "Partnership"), up to an aggregate number of duly authorized, validly issued, fully paid and nonassessable Class B Limited Partner Units equal to the Warrant Units Amount, at a purchase price per Class B Limited Partner Unit equal to the Warrant Price (as defined below), subject to the provisions and upon the terms and conditions hereinafter set forth. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in that certain Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings, L.P. by and among Daily Gazette Holding Company, LLC, a Delaware limited liability company ("DGHC"), and Charleston Publishing Company (as it may be amended from time to time, the "Partnership Agreement").

The purchase price of each Class B Limited Partner Unit shall be the price per Class B Limited Partner Unit determined in accordance with *Exhibit A* attached hereto and set forth in an addendum to this Warrant executed by Holder and the Partnership (the "Warrant Price"). The maximum number of Class B Limited Partner Units to be issued upon exercise of this Warrant (as adjusted from time to time, the "Warrant Units Amount") shall be equal to the number of Class B Limited Partner Units that constitute a twenty percent (20%) Percentage Interest in the Partnership (subject to adjustment as provided below (as adjusted from time to time, the "Warrant Percentage Amount") as of the date of exercise. The term "Class B Units" shall mean, unless the context otherwise requires, the Class B Limited Partner Units and other property at the time receivable upon the exercise of this Warrant. The term "Warrant(s)" as used herein shall include this Warrant and any warrant(s) delivered in substitution or exchange therefor as provided herein.

Method of Exercise; Payment

The purchase right represented by this Warrant may be exercised by Holder, in whole or in part, by:

The surrender of this Warrant at the principal office of the Partnership located at c/o Daily Gazette Company, 1001 Virginia Street, East, Charleston, WV 25301, Attn: Ms. Elizabeth Chilton, President, together with a written notice of Holder's election to exercise this Warrant, which notice shall specify the number of Class B Units (or the Percentage Interest of the Partnership) to be purchased;

the payment to the Partnership, by wire transfer of immediately available funds to an account designated by the Partnership, of an amount equal to the aggregate Warrant Price of the Class B Units being purchased;

if Holder is not already a party to the Partnership Agreement, the execution and delivery by Holder of an amendment to the Partnership Agreement (in a form prepared by Holder and reasonably acceptable to the General Partner) pursuant to which Holder will become a party to the Partnership as a Class B Limited Partner and agree to be bound by the terms and conditions of the Partnership Agreement (a "Partnership Amendment"); and

if Holder is not already a party to a put/call agreement in substantially the form attached to this Warrant as *Exhibit B* (a "Put/Call Agreement"), the execution and delivery by Holder of a Put/Call Agreement.

Class B Units purchased pursuant to this Warrant shall be uncertificated. Unless this Warrant has been fully exercised or has expired, a new Warrant representing the Class B Units with respect to which this Warrant shall not then have been exercised shall be issued to Holder as soon as practicable after each exercise of this Warrant, and in any event within thirty (30) days after the surrender of this Warrant. Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the date on which items (a) and (b) above have been satisfied, and the person entitled to receive the Class B Units issuable upon such exercise shall be treated for all purposes as the holder of such Class B Units of record as of the close of business on such date.

Certain Agreements

Upon surrender of this Warrant pursuant to Section 1:

a. The Partnership will cause the General Partner to immediately execute and deliver to Holder the Partnership Amendment executed and delivered by Holder pursuant to Section 1(c) above; and

b. The Partnership will (and the Partnership will cause the General Partner to) immediately execute and deliver to Holder the Put/Call Agreement executed and delivered by Holder pursuant to Section 1(d) above.

Covenant of Non-Impairment

The Partnership will not, by amendment of the Partnership Agreement or through reorganization, consolidation, merger, dissolution, issue or sale of Partnership Interests or other securities, sale of assets or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of Holder against dilution or other impairment.

Adjustment of Percentage Interest

At the end of each of the 2010, 2011, 2012, 2013 and 2014 fiscal years of the Partnership, the Warrant Percentage Amount shall be subject to adjustment as follows:

a. If the Daily Mail's percentage share of the Combined Circulation for the most-recently ended 12-month audit period exceeds the Daily Mail's percentage share for the immediately preceding 12-month audit period by more than one (1) percentage point, then the Warrant Percentage Amount will increase one (1) percentage point.

b. If the Daily Mail's percentage share of the Combined Circulation for the most-recently ended 12-month audit period is more than one (1) percentage point lower than the Daily Mail's percentage share for the immediately preceding 12-month audit period, then the Warrant Percentage Amount will decrease one (1) percentage point.

For purposes of determining adjustments to be made pursuant to this Section 3, the terms set forth below shall have the meanings assigned to them below:

"Daily Mail": *The Charleston Daily Mail.*

"Charleston Gazette": *The Charleston Gazette.*

"Daily Print Circulation": The average weekday paid print circulation of a newspaper as stated in the most recent 12-month audit conducted by the Audit Bureau of Circulations or other reputable third party media auditor.

"Combined Circulation": The sum of the Daily Print Circulation of the Daily Mail and the Charleston Gazette.

Term; Termination

This Warrant may be exercised in whole or in part at any time and from time to time, on or after [insert date] and shall terminate three (3) years thereafter. Notwithstanding the foregoing, this Warrant shall terminate immediately upon the cessation of the publication of *The Charleston Daily Mail.*

No Partner Rights

Holder shall not, solely by virtue hereof, be entitled to any rights of a partner of the Partnership prior to any exercise of this Warrant, and nothing contained in this Warrant shall be construed as imposing any obligation on Holder to purchase any Partnership Interest or as imposing any liabilities on Holder as a partner of the Partnership (prior to any exercise of this Warrant), whether such obligation or liabilities are asserted by the Partnership or by creditors of the Partnership.

Transfer

This Warrant may not be sold, assigned, disposed, hypothecated, pledged or otherwise transferred in whole or in part; provided, however, (x) Holder may assign this Warrant to any of Holder's Affiliates, provided that such Affiliate agrees to be bound by the provisions of this Warrant and (y) Holder may assign its rights under this Warrant as collateral security to persons or entities extending financing to Holder or any of its Affiliates (and such persons or entities may at any time foreclose on such security interest). The term "Holder" as used herein shall include any transferee to whom this Warrant has been transferred in accordance with this Section 7. Any transfer or attempted transfer in violation of this Section 7 shall be null and void. The term "Affiliate" as used herein shall mean, with respect to any person or entity, any other person or entity directly or indirectly controlling or controlled by such person or entity or under direct or indirect common control with such person or entity.

Securities Act of 1933

In addition to (and not in limitation of) the restrictions set forth in Section 6 above, Holder, by acceptance hereof, agrees that, absent an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the disposition of the Warrant or Class B Units issued or issuable upon exercise hereof, Holder will not sell or transfer any or all of such Warrant or Class B Units unless such sale or transfer will be exempt from the registration and prospectus delivery requirements of the Securities Act and an opinion of counsel reasonably satisfactory to the Partnership regarding such exemption is delivered to the Partnership. Holder consents to the Partnership's making a notation on its records in order to implement such restriction on transferability. Holder represents that it is an "accredited investor" within the meaning of Rule 501 under the Securities Act.

Remedies

The Partnership stipulates that the remedies at law of Holder, in the event of any default or threatened default by the Partnership in the performance of or compliance with any of the terms of this Warrant, are not and will not be adequate and that, to the fullest extent permitted by law, such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

Loss or Mutilation

Upon receipt by the Partnership of evidence satisfactory to it (in the exercise of reasonable discretion) of the ownership of and the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft, or destruction) of indemnity satisfactory to it (in the exercise of reasonable discretion), and (in the case of mutilation) upon surrender and cancellation thereof, the Partnership will execute and deliver in lieu hereof a new Warrant of like tenor.

Successors

All the covenants and provisions of this Warrant shall bind and inure to the benefit of Holder and the Partnership and their respective successors and permitted assigns.

Notices

All notices and other communications given pursuant to this Warrant shall be in writing and shall be deemed to have been given when personally delivered or when mailed by prepaid registered, certified or express mail, return receipt requested. Notices should be addressed as follows:

a. If to Holder, then to:

Affiliated Media, Inc., 101 W. Colfax Avenue, Suite 1100, Denver, CO 80202. Attention: Joseph J. Lodovic, IV, President.

With a copy (which shall not constitute notice) to:

Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004. Attention: James Modlin.

b. If to the Partnership, then to:

Daily Gazette Company, 1001 Virginia Street, East, Charleston, WV 25301. Attention: Elizabeth E. Chilton, President and Norman Watts Shumate III.

With a copy (which shall not constitute notice) to:

Edmondson + Blumenthal PLLC, 12 Cadillac Drive, Suite 210, Brentwood, TN 37027. Attention: Steven E. Blumenthal.

Such addresses for notices may be changed by any party by written notice to the other party pursuant to this Section 12.

Amendment

This Warrant may be amended only by an agreement in writing signed by the Partnership and Holder.

Construction of Warrant

Captions contained in this Warrant are inserted as a matter of convenience and in no way define the scope of this Warrant or the intent of any provision hereof. None of the provisions of this Warrant shall be for the benefit of or be enforceable by any creditor of the Partnership, any Partner or Holder. This Warrant, together with the exhibits attached hereto and the Partnership Agreement and the JOA, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements (oral or written) and understandings pertaining thereto. In the event of any conflict between this Warrant and any other agreement, this Warrant shall control. The invalidity of any article, section, subsection, clause or provision of this Warrant shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof.

Governing Law

This Warrant and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles.

Dated as of [insert date]

Charleston Newspapers Holdings, L.P.

By: Daily Gazette Company, General Partner

By: _____

Elizabeth E. Chilton,
President.

Exhibit A

Methodology for Determining Price per Class B Limited Partner Unit

The Warrant Price will be the appraised value of a Class B Limited

Partner Unit as of the date of this Warrant, as determined promptly following the execution and delivery of this Warrant by a nationally-recognized appraiser with experience in the newspaper industry that is reasonably acceptable to both Daily Gazette Company and the Holder. Each of the following appraisers are hereby deemed to be "reasonably acceptable" to both Daily Gazette Company and the Holder:

Dirks, Van Essen & Murray

In determining the price per Class B Limited Partner Unit, the appraiser will use the following methodology:

The appraiser shall determine the fair market value of the Partnership based on the going concern value of the Partnership as of the relevant date, with the following adjustments. In determining the Partnership's going concern value, the appraiser (i) shall assume that the value of any business is the cash price at which the assets of such business as a going concern would change hands between a willing buyer and a willing seller (neither acting under compulsion) in an arms-length transaction, on terms and subject to conditions and costs applicable in the newspaper publishing industry, (ii) shall assume that all assets used in the operation of the business of the Partnership and its Subsidiaries, whether owned by or licensed to the Partnership or any of its Subsidiaries (and all other assets of any Affiliate of the Partnership that are used by the Partnership or any of its Subsidiaries), were entirely owned directly by the Partnership, and (iii) shall not take into account expenditures in respect of any management agreements entered into by the Joint Venture. The Warrant Price with respect to any Class B Limited Partner Unit shall be an amount equal to (x) the fair market value of the Partnership as of the date of this Warrant (as determined in accordance with the preceding sentence) multiplied by (y) the Percentage Interest in the Partnership represented by such Class B Limited Partner Unit as of the date of exercise of the Warrant.

Exhibit B

Form of Class B Units Put/Call Agreement

[Attached]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAILY GAZETTE COMPANY, and MEDIANEWS GROUP, INC., Defendants.

Civil Action No. 2:07–0329
Judge Copenhaver
Magistrate Judge Stanley
Filed: January 20, 2010

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States brought this lawsuit against Daily Gazette Company ("Gazette Company") and MediaNews Group, Inc. ("MediaNews") on May 22, 2007, challenging a series of agreements entered into by the defendants on May 7, 2004 (the "May 2004 transactions"). The Complaint alleges that these transactions violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 & 2, by consolidating ownership and control of the only two local daily newspapers in Charleston, West Virginia, under Gazette Company and eliminating competition between them.

On January 20, 2010, the United States filed a proposed Final Judgment, which is described in more detail below. The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants

Defendant Gazette Company is a privately-held corporation based in Charleston, West Virginia. It has for many years owned and operated the *Charleston Gazette* ("*Gazette*"), a local daily newspaper founded in 1873 and circulated throughout a large portion of the State of West Virginia. MediaNews, now known as Affiliated Media, Inc., is a privately-held corporation with its principal place of business in Denver, Colorado. It owns and publishes over 50 daily newspapers in various markets throughout the United States. In 1998, MediaNews acquired the *Charleston Daily Mail* ("*Daily Mail*"), a local daily newspaper in Charleston, West Virginia, founded in 1880.

B. The Pre-2004 Joint Operating Arrangement

For many years after their founding, the *Gazette* and *Daily Mail* operated completely independently. In 1958, the then-owners of the two newspapers entered into a joint operating agreement. The agreement created a partnership, which for most of its existence went by the name Charleston Newspapers. Charleston Newspapers was responsible for printing, distribution, and advertising and subscription sales for both newspapers. Each newspaper owner held a 50% interest in the venture and all profits, losses, and capital costs were shared equally. At no time, however, did the owners combine their news operations, which continued to operate independently. In addition, each newspaper remained separately owned outside the joint venture. Each owner retained exclusive rights to the use of the names of their respective newspapers, and all goodwill, subscriber lists, subscriber relationships, and other intangible assets associated with their newspapers.

The two owners of Charleston Newspapers had an equal say in the management of the venture, and they jointly appointed a general manager who was responsible to both owners. Each owner appointed half of the representatives to a management committee that approved all significant decisions, including annual budgets and advertising and subscription rates. Each owner separately hired and supervised a publisher for its respective newspaper. The publishers oversaw the day-to-day business and news operations of each newspaper and reported directly to their respective newspaper's owner. The publishers exerted a substantial amount of control over the general manager and other employees of Charleston Newspapers and had the ability to block Charleston Newspapers from taking actions of which they disapproved.

In 1970, Congress enacted the Newspaper Preservation Act ("NPA"), 15 U.S.C. 1801, *et seq.,* which provided qualifying joint operating arrangements then in effect with limited antitrust immunity for certain specified business activities, as long as they continued to meet the requirements set forth in the NPA. Among these requirements was that the newspapers in a joint operating arrangement remain separately owned or controlled, that they maintain separate newsroom staffs, and that their editorial policies be "independently

determined." 15 U.S.C. 1802(2). Since 1970, Charleston Newspapers has held itself out as a qualifying newspaper joint operating arrangement and has claimed the antitrust immunity conferred by the NPA.

Despite the formation of Charleston Newspapers, the two newspapers remained vigorous competitors for readers. Each newspaper sought to capture readers by breaking stories first, finding stories that the other newspaper did not have, covering local news with greater depth and accuracy, and offering the most attractive mix of news, features, editorials, and other content. The *Gazette* and the *Daily Mail* sought to make their products more appealing by introducing new features, increasing the quantity of coverage, redesigning the appearance of their newspapers, competing to hire the best newsroom talent available, and taking numerous other steps to gain a competitive edge. Reporters and editors from each newspaper monitored the other on a daily basis and reacted directly to news coverage appearing in the competing newspaper.

Although the two newspaper owners were in a business partnership, they retained independent economic incentives. Each owner had the incentive to maximize the value of its own newspaper assets, which at all times remained under separate ownership outside the joint operating arrangement. This incentive existed for several reasons. First, each owner had an interest in preserving the value of its newspaper assets in case it wished to sell them in the future (either during the term of the joint operating arrangement or after its expiration). If an owner allowed its newspaper's circulation numbers and product quality to deteriorate, the effect would be to shorten that newspaper's life span, damage the value of its franchise, and deter potential buyers. Second, each owner wanted its respective newspaper to contribute to the success of Charleston Newspapers in order to maintain a strong bargaining position when the joint operating contract was renegotiated. Renegotiations of newspaper joint operating contracts occur on a regular basis, often driven by capital investments or other major strategic decisions, and frequently involve changes to the distribution of profit shares or other key contract terms. Owning a declining paper might result in a reduced share of the profits or other unfavorable terms for that owner. Third, the owners had conflicting interests regarding the termination or renewal of the joint operating arrangement. The *Daily Mail,* as the smaller-circulation newspaper in the afternoon position, wanted to maintain a high enough share of circulation credibly to threaten to continue competing when the joint operating arrangement ended, and to justify extending the termination date of the agreement so that it could continue to share in the profits of the venture. The *Gazette,* as the larger-circulation newspaper in the morning position, had the incentive to increase its circulation share to accelerate the demise of the *Daily Mail* and become the sole survivor in the market as soon as possible. Finally, if the joint operating arrangement were to terminate, the governing contract specified that the jointly-owned property would be divided to allow the owners to resume their status as independent competitors. The possibility that such competition could resume provided each owner with an incentive to keep its newspaper strong and maximize the value of its intellectual property.

The newspaper owners acted on these incentives in their management of Charleston Newspapers. For example, each owner actively sought to protect and increase the circulation of its respective newspaper rather than seeking solely to achieve the most profitable combined circulation. Each owner insisted that Charleston Newspapers treat both newspapers equally with respect to circulation sales and promotion efforts and regularly monitored Charleston Newspapers to ensure that managers were not favoring one paper over the other. Each owner pushed to expand home delivery routes into new areas and to increase the level of discounting to boost circulation for its respective newspaper. Each owner insisted that any new discount or promotional incentive launched for the other's newspaper be applied to its newspaper as well. This quest for additional circulation, and the policy of treating the two newspapers equally in circulation sales efforts, led to newspaper subscribers receiving higher levels of discounts than they would likely have received had Charleston Newspapers been controlled by one owner. In addition, each owner sought to maintain a large news staff, a substantial newsroom budget, and generous newshole (the amount of newspaper space devoted to news content as opposed to advertising) to allow it to better compete with the other newspaper for readership. Each owner also insisted on retaining the power to set its newsroom's staffing and compensation levels. This competitive drive led the owners to spend far more on the newsrooms in Charleston than newspaper owners in comparably-sized newspaper markets typically do.

Each owner took affirmative steps to preserve its competitive position and the long-term value of its assets. Each regularly blocked certain proposals that would have saved money for Charleston Newspapers because one owner believed that the proposal would provide the rival newspaper with a competitive advantage. Moreover, although each owner had the power to make cuts to its own newspaper's staff, newshole, budget, subscription discounts, or circulation area without obtaining the approval of the other owner, neither owner did so—even when such cuts clearly would have increased the profits of the venture—out of concern over being at a competitive disadvantage to the other newspaper. Neither owner was willing to sacrifice the value of its assets unless the other owner did the same. These actions taken by the owners in pursuit of their separate economic interests prevented Charleston Newspaper from achieving monopoly levels of output or profits.

In short, the competition between the *Gazette* and the *Daily Mail* benefitted readers by giving them a choice between two high-quality local newspapers with unique content at lower prices than would have prevailed if there had been one newspaper owner in this market. Advertisers likewise benefitted by having access to two unique sets of readers at prices that were lower than in comparable single-owner markets.

C. The May 2004 Transactions

At the end of 2003, MediaNews arranged to sell the *Daily Mail* and its 50% interest in Charleston Newspapers to an experienced newspaper operator for $55 million. At the time, Charleston Newspapers was earning substantial profits, and the *Daily Mail* was financially healthy and stable. The joint operating arrangement between MediaNews and Gazette Company allowed each partner the right of first refusal to match any third-party offer to buy one of the newspapers. Rather than allow the new buyer to take over the *Daily Mail* and continue the competition that had prevailed for decades, Gazette Company decided to exercise its right of first refusal and gain control of both newspapers.

Several months earlier, anticipating that the opportunity to exercise its right of first refusal might arise, Gazette Company began contacting lenders to secure the necessary financing. As the Complaint alleges, during this time Gazette Company developed a plan to shut down the *Daily Mail* and become the publisher of the sole remaining

newspaper in Charleston. Gazette Company created a series of business plans, financial projections, and other documents showing that it would cease publishing the *Daily Mail* by no later than the end of 2007. The plans called for the rapid reduction of the *Daily Mail*'s circulation and its newsroom staff and budget until, in 2007, the newspaper would no longer be economically viable. At that point, Gazette Company believed it would be able to justify the closure of the *Daily Mail* under the NPA to the Department of Justice. In short, Gazette Company planned to deliberately transform a financially healthy and stable *Daily Mail* into a failing newspaper and close it far earlier than the market would otherwise have dictated. According to its internal projections, Gazette Company calculated that it would be better off financially by closing the *Daily Mail* as soon as possible. By switching a critical mass of *Daily Mail* readers to the *Gazette,* advertising revenues would hold steady and the savings from disbanding the *Daily Mail* would allow Gazette Company to increase its profit margins substantially. These planning documents were provided to lenders and were the foundation upon which Gazette Company secured financing for the May 2004 transactions. None of Gazette Company's pre-transaction business plans contemplated the continued publication of the *Daily Mail* beyond 2007.

On May 7, 2004, Gazette Company and MediaNews entered into a series of transactions that merged their economic interests and gave Gazette Company ownership and control over both newspapers. In exchange for approximately $55 million, MediaNews transferred ownership of the *Daily Mail* assets and its 50% interest in Charleston Newspapers to subsidiaries of the Gazette Company. Under this new arrangement, Gazette Company retained 100% of the profits generated by both newspapers. MediaNews no longer shared in the profits or losses of the business and had no further obligation to contribute to capital costs. MediaNews had no representatives on the management committee of the venture and no right to vote on any matter. Gazette Company was given sole discretion to manage Charleston Newspapers. It had the unilateral authority to establish the annual budgets, determine the staffing levels, and approve all the hiring and firing decisions for both newspapers. The 2004 agreements also gave Gazette Company the express right to terminate publication of the *Daily Mail* without the approval of MediaNews (a right that Gazette Company had specifically bargained for in negotiations). The Defendants attempted to satisfy the NPA's requirement of separately-controlled newsrooms by arranging to pay MediaNews a flat fee of $200,000 per year to provide "management and supervision" services to the newsroom of the *Daily Mail.* May 7, 2004 Joint Operating Agreement § V (J)(4). The fee was adjusted annually for inflation but did not vary based on how well or how poorly the newspaper performed. Despite the payment of the fee, however, MediaNews employees did not exercise management control over the *Daily Mail* after May 2004. In reality, the Complaint alleges that Gazette Company controlled both newspapers.

D. Post-Transaction Conduct

Almost immediately after the transactions closed, Gazette Company began to take steps to implement its plans to close the *Daily Mail.* As alleged in the Complaint, Gazette Company stopped soliciting new subscribers for the *Daily Mail,* stopped offering promotions and discounts to new *Daily Mail* subscribers, cut dozens of *Daily Mail* home delivery and single copy routes (and refused to accept new subscriptions on many routes that remained), attempted to convert numerous *Daily Mail* readers to the *Gazette,* and took other steps with the goal of reducing the *Daily Mail*'s circulation.

At the same time, Gazette Company took several other actions that damaged the quantity and quality of content available to *Daily Mail* readers: It allowed almost half of the *Daily Mail* newsroom staff to leave during 2004 and forbade the editor from hiring replacements; it cut the *Daily Mail*'s budget substantially in both 2004 and 2005 (while increasing the *Gazette*'s); it ended the *Daily Mail*'s Saturday edition; and it transferred several of the best *Daily Mail* reporters to the *Gazette.* Gazette Company also directed the *Daily Mail* to end its second daily edition, which contained late-breaking news and was viewed by the newspaper's staff as important to maintaining the quality and competitiveness of the paper. As a result of these actions, the quantity and quality of original local content created by the *Daily Mail* staff fell steadily through the end of 2004. Original local content is considered by both Defendants to be the most important and valuable content produced by these newspapers. Due to the loss of staff, the remaining *Daily Mail* reporters were required to take on extra coverage areas, other coverage areas were dropped, several sections per week were cut from the paper, and more work was farmed out to stringers who were not full-time journalists. The *Daily Mail* staff was forced to fill space by doing things that they considered to be departures from the paper's prior standards of quality, such as reprinting stories verbatim from the *Gazette* without doing any new reporting, and running more non-local wire service stories.

Due to these actions by Gazette Company, the circulation of the *Daily Mail* fell from 35,076 in February 2004 to 23,985 in January 2005. Moreover, the *Daily Mail* became a less vigorous competitor to the *Gazette* and its readers got less for their money. Had the Department of Justice investigation not interrupted Gazette Company's plans in late 2004, the situation would likely have continued to deteriorate as more resources were shifted away from the *Daily Mail* in preparation for its closure in 2007.

E. The Competitive Effects of the Alleged Violation

The Complaint alleges that the relevant product market is local daily newspapers and the relevant geographic market is Kanawha and Putnam counties in West Virginia. The local daily newspaper market is two-sided: Publishers sell newspapers to readers and simultaneously sell access to those readers to advertisers. With respect to readers, the two Charleston daily newspapers are a relevant market because, among other reasons, Charleston Newspapers has the ability to impose small but significant, non-transitory price increases on readers without losing so much business to other media as to make the increases unprofitable, and these newspapers have unique attributes (such as original, in-depth local news, local editorials and opinion, local display and classified advertising, and other features) that are not replicated by other local media. With respect to advertisers, the two Charleston daily newspapers are a relevant market because, among other reasons, Charleston Newspapers has the ability to impose small but significant, non-transitory price increases on its advertisers without losing so much business to other media as to make the increases unprofitable, and advertising in these newspapers has unique characteristics and a unique audience that cannot be replicated by other local media in Charleston.

The Complaint alleged that the May 2004 transactions extinguished the independent competitive incentives that existed under the prior joint operating arrangement. As a result of the

transactions and the conduct described above, readers were harmed by a reduction in the amount and quality of original content generated by the *Daily Mail,* the lessening of competition between the *Daily Mail* and the *Gazette,* the elimination of the discounts that had been available prior to May 2004, and the reduction in the distribution area of the *Daily Mail,* meaning that many readers no longer had access to their preferred newspaper. Had the Gazette Company succeeded in its plan to close the *Daily Mail,* readers would have been deprived of a choice of local daily newspapers and would likely have paid higher prices for a newspaper with less content and lower quality. Likewise, advertisers were harmed because the circulation and household penetration of the *Daily Mail* fell as prices rose, rendering the newspaper a less effective means of advertising in the Charleston area.

III. Explanation of the Proposed Final Judgment

The Final Judgment requires the Defendants to enter into a new contractual relationship that will supersede the existing arrangement that the United States challenged. The Defendants' new arrangement consists of five contracts: a Limited Partnership Agreement, a Joint Operating Agreement, a revised Operating Agreement of Daily Gazette Holding Company, a Put/Call Agreement, and a Warrant Agreement, all of which are attached to and made a part of the Final Judgment. The Final Judgment prohibits the Defendants from amending or terminating these contracts, or entering into any subsequent contracts relating to the publication of newspapers in Charleston, without the consent of the United States.

The new contracts address the competitive concerns resulting from the May 2004 transactions by, among other things, implementing several important changes to the governance provisions of the Defendants' arrangement. MediaNews will be given the right to appoint two of the five seats on the Board of Managers overseeing the Limited Partnership. Currently, MediaNews does not have the right to name any board members. MediaNews' board representatives will have the right to vote on all matters coming before the board. Most matters will be subject to approval by a majority vote; however, the annual newsroom budgets for the *Daily Mail* and the *Gazette* must each be approved by a super-majority of four votes. This requirement will provide MediaNews with the ability to protect the *Daily Mail*'s budget and negotiate for the resources it needs to compete effectively with the *Gazette.* Under the 2004 arrangement, the *Daily Mail* budget was unilaterally determined by Gazette Company and its appointed manager at Charleston Newspapers, and could be changed at any time.

The Final Judgment guarantees that the content of the *Daily Mail* will be independently determined solely by MediaNews and the staff of the *Daily Mail.* Likewise, the content of the *Gazette* must be independently determined by the Gazette Company and *Gazette* staff. The Final Judgment forbids either Defendant from taking any action to influence the content of the other's newspaper. It also prohibits the Defendants from entering into any agreement that would limit the editorial independence of the two newspapers.

Currently, the Gazette Company (through its control of Charleston Newspapers) determines the size of the *Daily Mail* newsroom and must approve any hiring and firing decisions. To further re-establish the independence of the *Daily Mail,* the revised contracts provide that MediaNews will have sole authority to determine the identity of the *Daily Mail* newsroom employees and how much they are paid. The *Daily Mail* will have no fewer than 32 newsroom positions in the first year of the agreement, and thereafter MediaNews will set the size of the newsroom at whatever level it sees fit, provided that if total employee expense exceeds the annual budgeted amount set by the Limited Partnership board, MediaNews must pay the excess cost. These changes to the contracts are designed to prevent the recurrence of the events of 2004, described above.

The Final Judgment also prohibits the Defendants from discriminating against the *Daily Mail* in performing any activities related to circulation sales or advertising sales. Among other things, this provision would prohibit the type of conduct alleged in the Complaint, whereby Charleston Newspapers discontinued efforts to solicit new *Daily Mail* subscribers and ceased offering discounts to new *Daily Mail* subscribers, while continuing these activities for the *Gazette.* The revised contracts contain several other protections for the *Daily Mail,* including that (1) the amount of space devoted to news content (newshole) and the availability of color will be budgeted at the same level for both newspapers; (2) the press deadlines, delivery targets, number of editions and days of publication for the *Daily Mail* will not be changed without the approval of MediaNews; and (3) the primary circulation area of the *Daily Mail* as of August 1, 2009 will not be reduced without the approval of MediaNews. Under the 2004 arrangement, Gazette Company had the unilateral power to make changes in any of these areas.

To enhance the competitiveness of the *Daily Mail* and remedy past practices, the Final Judgment contains a remedial provision that calls for the Defendants to offer subscriptions to the *Daily Mail* at no less than 50% off the regular price. This offer must be available for a period of at least six months and must be made available only to *Daily Mail* subscribers. Thereafter, Charleston Newspapers must make the same promotional offers available for potential subscribers of both newspapers, unless MediaNews approves a deviation. The purpose of the special offer is to remedy, to the extent possible, the effects of Gazette Company's actions that the Complaint alleged were intended to undermine the circulation of the *Daily Mail.*

The Final Judgment contains several provisions to prevent the unjustified termination of publication of the *Daily Mail.* The 2004 contracts gave Gazette Company the unilateral authority to cease publishing the *Daily Mail.* The Final Judgment provides that the *Daily Mail* must continue publishing as a daily newspaper (defined in the Final Judgment as a print publication which is published no fewer than five days per week) unless it is determined to be a failing firm under antitrust law, as applied to newspaper joint operating agreements, and the United States has given its prior written approval. The Defendants may not deliberately hasten the failure of the *Daily Mail:* Under the Final Judgment, the Defendants may not take any action with the intent to cause the *Daily Mail* to become a failing newspaper. Unless it receives approval from the United States, the Defendants may not establish a termination date for the *Daily Mail.*

In the event that Charleston Newspapers is permitted to cease publication of the *Daily Mail,* the Final Judgment requires that ownership of all of the intellectual property associated with that newspaper (such as its masthead, copyrights, trademarks, subscriber and advertiser lists, Internet URL, and archives) must, after satisfaction of any current, outstanding creditors, be transferred back to MediaNews at no cost to MediaNews and free of any liens or other encumbrances. This transfer requirement would also be triggered if the Defendants end their Limited Partnership or Joint Operating agreements. Prior to the closure of the *Daily Mail,* Gazette Company must obtain an appraisal of the fair market

value of the newspaper's intellectual property. To the extent the appraisal determines that the assets may be freely disposed of by Gazette Company under the terms of Section 7.8 of the credit agreement with United Bank (or the equivalent provision of any future credit agreement), Gazette Company must transfer the intellectual property to MediaNews.(1) If the transfer cannot be accomplished due to any outstanding security interest or lien, Gazette Company must use its good faith efforts to obtain a release of the assets by the creditors. Once the intellectual property has been transferred, it may not be reacquired by Gazette Company. These portions of the Final Judgment are intended to prevent Gazette Company from retaining ownership of the *Daily Mail* intellectual property in the event that MediaNews wishes to continue publishing the newspaper independently of Charleston Newspapers, or if a third-party wishes to acquire these assets from MediaNews in order to compete against Gazette Company. Under the 2004 contracts, Gazette Company could retain the *Daily Mail* intellectual property upon the termination of the Joint Operating Agreement or the Limited Partnership Agreement unless MediaNews paid Gazette Company to get it back and assumed certain associated liabilities. If MediaNews did not want to buy back the intellectual property, it would remain under the permanent ownership of Gazette Company. If MediaNews did elect to buy back the intellectual property, Gazette Company held a right of first refusal to purchase it from MediaNews for 10 years after the end of the Joint Operating Agreement or the Limited Partnership Agreement, which limited the ability of third-parties to acquire the intellectual property to compete against Gazette Company. These provisions of the 2004 contracts have been removed from the new contractual arrangement.

The Defendants' revised contracts will put in place several new financial incentives that are intended to spur them to compete for readers and enhance the quality of their newspapers. First, as discussed above, if the *Daily Mail* ceases publishing, the Limited Partnership ends, or the Joint Operating Agreement ends, the *Daily Mail* intellectual property will, subject to satisfaction of current security interests, transfer to MediaNews at no cost. MediaNews would then be free to use or sell these assets as it sees fit. The 2004 contracts imposed several conditions that substantially decreased the likelihood that MediaNews would ever own the *Daily Mail* intellectual property again. Under the revised contracts, the increased likelihood that MediaNews will receive these assets provides MediaNews with an ongoing incentive to increase their value. Second, concurrently with the settlement, MediaNews will receive a warrant entitling it to purchase Class B shares representing 20% of the equity in Charleston Newspapers Holdings Limited Partnership. Depending upon the future performance of the *Daily Mail,* the amount of equity MediaNews is eligible to purchase may be adjusted up or down. For each annual gain of 1% or more in *Daily Mail* circulation market share vis-a-vis the *Gazette,* MediaNews would be entitled to purchase an additional 1% of equity. Conversely, for each annual decline of 1% or more, the amount of equity MediaNews is entitled to purchase would decrease by 1%. The exercise price is the appraised value of a Class B share as of the date of the warrant's issuance. The warrant can be exercised during a three-year window starting on the fifth anniversary of its issuance. MediaNews will be allowed to purchase any amount of equity it desires, up to the maximum permitted by the warrant. Thereafter, it is permitted to sell its shares to third parties (except for a publisher of a competing newspaper in Charleston with a circulation market share above 5%). Class B shareholders are eligible to receive dividends that may be distributed by the Limited Partnership. The warrant will once again provide MediaNews a financial stake in the success of both the *Daily Mail* and the newspapers' joint venture.

Should the *Daily Mail* cease publishing at any time after the conversion of the warrant, Gazette Company must repurchase all of the outstanding Class B shares. This mandatory repurchase requirement is necessary to avoid providing the owner(s) of the Class B shares a financial incentive to terminate publication of the *Daily Mail.*

Third, the revised Limited Partnership Agreement creates a further financial incentive by basing the size of the annual *Daily Mail* management fee paid to MediaNews on the performance of the paper. Under the 2004 arrangement, MediaNews received a fixed management fee that did not vary based on the performance of the *Daily Mail.* The new Limited Partnership Agreement provides for a variable fee that can adjust upwards or downwards by as much as $25,000 depending on the annual changes in the *Daily Mail*'s circulation. The adjustment in the fee is subject to a floor of $225,000 per year.

A fourth financial incentive consists of cash bonuses paid to the Circulation Director of Charleston Newspapers and the publisher of the *Daily Mail* for increases in *Daily Mail* circulation in a given six-month period.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

At several points during the litigation, the United States received from Defendants proposals or suggestions that would have provided less relief than is contained in the proposed Final Judgment. These proposals and suggestions were rejected.

The United States considered, as an alternative to the proposed Final Judgment, proceeding with the full trial on the merits against Defendants that was scheduled to commence on April 20, 2010. The United States is satisfied, however, that the prohibitions and requirements contained in the proposed Final Judgment will adequately address the competitive concerns regarding the unique local daily newspaper market in Charleston, and will avoid the delay, risks, and costs of further litigation.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

A. The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

B. the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere

compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.

VIII. Determinative Documents

Other than the contracts that are attached as Exhibit A to the Final Judgment and incorporated therein, there are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

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s/Stephen M. Horn

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Dated: January 20, 2010.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON DIVISION

UNITED STATES OF AMERICA, *Plaintiff,* v. DAILY GAZETTE COMPANY, and MEDIANEWS GROUP, INC., *Defendants.*

Civil Action No. 2:07–0329
Judge Copenhaver
Magistrate Judge Stanley
Filed: January 20, 2010

Certificate of Service

I hereby certify that on January 20, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Lee H. Simowitz, Ronald F. Wick, Baker & Hostetler LLP, Washington Square, Suite 1100, 1050 Connecticut Avenue, NW., Washington, DC 20036.

Benjamin L. Bailey, Brian A. Glasser, Bailey & Glasser LLP, 227 Capitol Street, Charleston, WV 25301.

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Michael T. Chaney John R. Hoblitzel, Kay Casto & Chaney, P.O. Box 2031, Charleston, WV 25327–2031,

/s/ William H. Jones, II
William H. Jones, II.

Footnotes

1. Section 7.8 of the United Bank agreement provides:

Sale of Stock and Assets. No Credit Party shall sell, transfer, convey, assign or otherwise dispose of any of its properties or other assets, including the Stock of any of its Subsidiaries (whether in a public or a private offering or otherwise) or any of its Accounts, other than (a) the sale of Inventory in the ordinary course of business; (b) the sale or other disposition by a Credit Party of property that is obsolete or no longer used or useful in such Credit Party's business and having a book value, not exceeding $100,000 in the aggregate in any Fiscal Year; and (c) the sale or other disposition of other property having a book value not exceeding $100,000 in the aggregate in any Fiscal Year.

2. The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

3. *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

4. *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

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Federal Register

Thursday,
March 11, 2010

Part IV

Department of Labor

Office of the Secretary

Secretary's Order 2–2010; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 2–2010

Subject: Small and Disadvantaged Business Utilization Program.

1. *Purpose.* To define the authority and assign responsibilities for the administration of the small and disadvantaged business utilization program in the Department of Labor.

2. *Authority and Directives Affected.*

A. *Authorities.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.;* 5 U.S.C. 301; the Small Business Act (15 U.S.C. 631 *et seq.*), including section 15(k) (15 U.S.C. 644(k)); the Historically Underutilized Business Zone Act of 1997 (15 U.S.C. 631 note); the Regulatory Flexibility Act (*see* 5 U.S.C. 601 *et seq.*); the Small Business Regulatory Enforcement Fairness Act ("SBREFA") (*see* 5 U.S.C. 601 *et seq.* and 15 U.S.C. 657); 44 U.S.C. 3506(i); Executive Order 12432, "Minority Business Enterprise Development" (July 14, 1983); Executive Order 12928, "Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions" (September 16, 1994); Executive Order 13230, "President's Advisory Commission on Educational Excellence for Hispanic Americans" (October 12, 2001); Executive Order 13256, "President's Board of Advisors on Historically Black Colleges and Universities" (February 12, 2002), as amended and continued by Executive Order 13511; Executive Order 13270, "Tribal Colleges and Universities" (July 3, 2002) as amended and continued by Executive Order 13511; and Executive Order 13515, "Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs" (October 14, 2009).

B. *Directives Affected.*

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

(2) Secretary's Order 4–2002 is superseded and cancelled.

3. *Background.* This Secretary's Order is issued concurrently with the realignment of the Department's small business-related functions under the Assistant Secretary for Administration and Management. The goal of this realignment is to better integrate small business outreach and small business procurement with the overall DOL procurement function—to make the appropriate use of small business services part of DOL's "standard operating procedure."

4. *Director of the Small and Disadvantaged Business Utilization Program.* The Assistant Secretary for Administration and Management is hereby appointed to serve as the Director of the Small and Disadvantaged Business Utilization program for the Department (the "Director"). The Director is vested with the management of the Department's Small and Disadvantaged Business Utilization program and will have responsibility for overseeing the activities of that program as set forth in paragraph 5 below. The Director is responsible only to, and will report directly to, the Secretary.

5. *Delegation of Authority and Assignment of Responsibilities to the Director of the Small and Disadvantaged Business Utilization Program.*

A. *The Director of the Small and Disadvantaged Business Utilization Program* will have the following duties, which are assigned to the Director by Section 15(k) of the Small Business Act, 15 U.S.C. 644(k):

(1) Be responsible for implementing and executing the functions and duties under 15 U.S.C. 644 and 15 U.S.C. 637 which relate to the Department, and cooperating, and consulting on a regular basis, with the Small Business Administration ("SBA") with respect to carrying out such functions and duties;

(2) Identifying proposed solicitations that involve significant bundling of contract requirements, and work with acquisition staff and the SBA to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(3) Assisting small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from the Department or a contractor, in conformity with chapter 39 of title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or the Department's acquisition regulations;

(4) Exercising supervisory authority over agency personnel to the extent that the functions and duties of such personnel relate to functions and duties under 15 U.S.C. 644 and 15 U.S.C. 637;

(5) Assigning a small business technical adviser to each office to which an SBA procurement center representative is assigned—

(a) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

(b) whose principal duty shall be to assist the SBA procurement center representative in his duties and functions relating to 15 U.S.C. 644 and 15 U.S.C. 637;

(6) Recommending to contracting officers whether a particular contract requirement should be awarded pursuant to 15 U.S.C. 644(a) or 15 U.S.C. 637(a). Such recommendations shall be made with due regard to the requirements of subsection 15 USC 644(m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.

B. *The Director of the Small and Disadvantaged Business Utilization Program* is delegated authority and assigned responsibility for the following additional activities relating to small business concerns:

(1) Ensuring that the Department fulfills its responsibility to provide procurement opportunities for small business concerns, small disadvantaged businesses, women-owned small businesses, Historically Underutilized Business Zone (HUBZone) businesses, and businesses owned by service-disabled veterans, including:

(a) Establishing Departmental and agency goals, in cooperation with agencies and in accordance with 15 U.S.C. 644, for the participation by such entities in appropriate procurement actions;

(b) Consulting with the SBA as necessary and preparing the annual plan and annual report from the Secretary to the SBA Administrator on participation of small entities in procurement actions by the Department;

(c) Conducting outreach programs, seminars, and similar initiatives for such entities and acting as the Department's liaison to such entities for program procurement activities;

(d) Providing training regarding utilization of small and disadvantaged businesses to DOL employees whose duties and functions relate to procurement; and

(e) Ensuring the Department's compliance with the procurement and property disposal requirements of 15 U.S.C. 637(b).

(2) Ensuring that small business specialists are appointed throughout the Department, and are trained in performing their duties.

(3) Publishing information required by Sections 8 and 15 of the Small Business Act.

(4) Coordinating and consulting, as appropriate, with other DOL agencies in fulfilling the above responsibilities.

(5) Appointing a point of contact to act as liaison between the Department and small business concerns and notifying the SBA of such point of contact, all in accordance with the Small Business Paperwork Relief Act of 2002.

(6) Performing any additional or similar duties which may be assigned by law or by the Secretary.

6. *Delegation of Authority and Assignment of Responsibilities to Other Departmental Officials*

A. *The Assistant Secretary for Administration and Management (the "ASAM").*

(1) The ASAM is delegated authority and assigned responsibility for the following SBREFA compliance and related matters:

(a) Acting as the Department's ombudsman to small businesses, including responding to inquiries or complaints arising under SBREFA and coordinating with the relevant enforcement agencies within the Department to respond to such inquiries and complaints.

(b) Serving as the Department's liaison with the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman (the "National Ombudsman") and providing, in coordination with the Department's enforcement agencies, the Department's response and other input related to the SBA Ombudsman's Regulatory Fairness Recommendations Report to Congress (known as the National Ombudsman's Report to Congress.)

(2) The ASAM is delegated authority and assigned responsibility for the following activities in support of minority serving institutions:

(a) Acting as the Department's liaison to minority businesses and institutions; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under Executive Orders 12432 and 12928, including efforts to increase the involvement of minority businesses in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the Department of Commerce's Minority Business Development Agency.

(b) Acting as the Department's liaison to Tribal Colleges and Universities; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under EO 13270, as amended by EO 13511, including efforts to increase the involvement of Tribal Colleges and Universities in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Board of Advisors on Tribal Colleges and Universities and the White House Initiative on Tribal Colleges and Universities.

(c) Acting as the Department's liaison to Asian Americans and Pacific Islanders as related to: Planning, coordinating, monitoring, evaluating, and reporting on the Department's activities under EO 13515, including efforts to increase the involvement of Asian Americans and Pacific Islanders in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Advisory Commission on Asian Americans and Pacific Islanders and the White House Initiative on Asian Americans and Pacific Islanders.

(d) Acting as the Department's liaison to Hispanic Americans as related to: Planning, coordinating, monitoring, evaluating, and reporting on the Department's activities under EO 13230, including efforts to increase the involvement of Hispanic Americans in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Advisory Commission on Educational Excellence for Hispanic Americans and the White House Initiative on Educational Excellence for Hispanic Americans.

(e) Acting as the Department's liaison to HBCUs; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under Executive Orders 12928 and 13256, including efforts to increase the participation of HBCUs in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Board of Advisors on HBCUs and the White House Initiative on HBCUs.

B. *The Assistant Secretary for Employment and Training* is responsible for ensuring that small business-related informational materials are made available via the public workforce system—One Stop Career Centers—in order to provide advisory services to small/disadvantaged businesses at the local level, including:

(1) Helping entrepreneurs understand how to qualify as a small/disadvantaged business in the Federal sector via links or information that can be obtained via Web sites.

(2) Providing information on navigating government processes in order to help businesses understand how to successfully bid on and win government contracting opportunities.

(3) Linking small/disadvantaged businesses to Federal contracting opportunities via Web sites.

(4) Providing information and/or links to information relating to business planning, staffing, financing, etc.

C. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order.

D. *DOL Agency Heads* are responsible for:

(1) Developing Agency annual acquisition plans, and annual small and disadvantaged business utilization plans, consistent with Agency responsibilities.

(2) Developing Agency minority institution activity plans, consistent with Agency responsibilities, to promote the objectives of Executive Orders 12432, 12928, 13230, 13256, 13270 and 13515 or similar laws.

(3) Conferring with Agency program and procurement officials to establish Agency monetary procurement goals, minority institution commitments, minority business development plans, and ensuring that Agency program and procurement officials cooperate to achieve these objectives.

(4) Ensuring that reports concerning degree of achievement of the above objectives are accurate and submitted in a timely manner.

7. *Reservations of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary, as is the submission of the Department's annual plan and annual report to the SBA on participation by small business concerns, small disadvantaged businesses, women-owned small businesses, HUBZone businesses, and businesses owned by service-disabled veterans, in the Department's procurement actions.

B. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 4–06 (February 21, 2006).

8. *Effective Date.* This Order is effective immediately.

Dated: March 4, 2010.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2010–5295 Filed 3–10–10; 8:45 am]

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