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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 9, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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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 HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Parts 212, 215, and 235

19 CFR Parts 4 and 122

[Docket No. USCBP–2009–0001; CBP Dec. No. 09–14]

RIN 1651–AA77

Establishing U.S. Ports of Entry in the Commonwealth of the Northern Mariana Islands (CNMI) and Implementing the Guam-CNMI Visa Waiver Program; Change of Implementation Date

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Technical amendment to Interim Final Rule.

SUMMARY: On January 16, 2009, U.S. Customs and Border Protection (CBP) published an interim final rule that implements section 702 of Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) by amending CBP regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program and establishing six ports of entry in the CNMI. The interim final rule specified that CBP would begin operation of this program on the statutorily established transition program effective date of June 1, 2009. The interim final rule further specified that the existing Guam Visa Waiver Program for travel to Guam would remain in effect until June 1, 2009. On March 31, 2009, the Secretary of the Department of Homeland Security (DHS) announced that she had exercised her authority to delay the transition program effective date until November 28, 2009. This technical amendment effectuates this delay by changing the implementation date of the interim final rule from June 1, 2009 to November 28, 2009.

DATES:

Effective Date: This technical amendment is effective on May 28, 2009.

Implementation Date: Beginning November 28, 2009, Customs and Border Protection (CBP) will begin operation of this program and required compliance with the interim final rule will begin. The existing Guam Visa Waiver Program remains in effect for travel to Guam until November 28, 2009.

FOR FURTHER INFORMATION CONTACT: Cheryl C. Peters, Office of Field Operations, at (202) 344–1438.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 2008, President George W. Bush signed into law the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110–229, 122 Stat. 754. Section 702(a) of the CNRA extends U.S. immigration laws to the CNMI. *See* sections 212 and 214 of the INA, 8 U.S.C. 1182 and 1184. Section 702(a) of the CNRA provides that the Secretary of Homeland Security, in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the CNMI, may delay the transition program effective date for up to 180 days.

Section 702(b) of the CNRA authorizes DHS to create a Guam-CNMI Visa Waiver Program. On January 16, 2009, DHS, through CBP, issued an interim final rule establishing the Guam-CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program. *See* 74 FR 2824. The interim final rule provided that beginning June 1, 2009, DHS would begin operating ports-of-entry in the CNMI for immigration inspection of arriving aliens and to establish departure control for certain flights leaving the CNMI. In addition, the rule provided that on that date, DHS would begin the administration and enforcement of the Guam-CNMI Visa Waiver Program. The interim final rule provided that any delay in the implementation date of the Guam-CNMI Visa Waiver Program would be published in the **Federal Register**.

After the necessary consultations, the Secretary of Homeland Security announced on March 31, 2009, the delayed transition to full application of the CNRA until November 28, 2009. Accordingly, this document amends the January 16, 2009 interim final rule to reflect the new implementation date.

II. Statutory and Regulatory Requirements

This technical amendment delays the implementation date of the Guam-CNMI Visa Waiver Program from June 1, 2009 to November 28, 2009. The interim final rule implementing the Guam-CNMI Visa Waiver Program provided analysis addressing DHS's statutory and regulatory requirements under the Administrative Procedure Act (APA), Executive Order 12866, Regulatory Flexibility Act, Unfunded Mandates Reform Act of 1995, Executive Order 13132, Executive Order 12988, Paperwork Reduction Act, and the Privacy Act. That analysis is adopted and incorporated herein by reference. As indicated in the interim final rule, pursuant to § 702(b) of the CNRA, the implementation of the Guam-CNMI Visa Waiver Program is considered a foreign affairs function for purposes of section 553(a) of the APA. Accordingly, this technical amendment to the interim final rule is statutorily exempt from the requirements of the APA.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

19 CFR Part 4

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

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated in the preamble, DHS amends parts 212, 215 and 235 of title 8 of the Code of Federal Regulations and parts 4 and 122 of title 19 of the Code of Federal Regulations as set forth below:

8 CFR Chapter I—Amendments

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The general authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295). Section 212.1(q) also issued under section 702, Public Law 110–229, 100 Stat. 842.

§ 212.1 [Amended]

■ 2. Amend § 212.1, paragraphs (e)(1) introductory text and (q)(1) introductory text, by removing the date ''June 1, 2009'' and adding in its place ''November 28, 2009''.

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

■ 3. The general authority citation for part 215 continues to read as follows:

Authority: 8 U.S.C. 1101; 1104; 1184; 1185 (pursuant to Executive Order 13323, published January 2, 2004); 1365a note. 1379, 1731–32.

§ 215.1 [Amended]

■ 4. Amend § 215.1, paragraphs (e), (g)(9), and (j), by removing the date ''June 1, 2009'' and adding in its place ''November 28, 2009''.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 5. The authority for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

§ 235.5 [Amended]

■ 6. Amend § 235.5, paragraph (a), by removing the date ''June 1, 2009'' and adding in its place ''November 28, 2009''.

19 CFR Chapter 1—Amendments

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 7. The general authority for part 4 and the specific authority citation for § 4.7b continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66; 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.7b also issued under 8 U.S.C. 1101, 1221;

* * * * *

§ 4.7b [Amended]

■ 8. Amend § 4.7b, paragraph (a), in the definition of ''United States,'' by removing the date ''June 1, 2009'' and adding in its place ''November 28, 2009''.

PART 122—AIR COMMERCE REGULATIONS

■ 9. The general authority for part 122 and the specific authority citation for § 122.49a continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

Section 122.49a also issued under 8 U.S.C. 1101, 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

* * * * *

§ 122.49a [Amended]

■ 10. Amend § 122.49a, paragraph (a), in the definition of ''United States,'' by removing the date ''June 1, 2009'' and adding in its place ''November 28, 2009''.

Dated: May 21, 2009.

Jayson P. Ahern,

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

[FR Doc. E9–12345 Filed 5–27–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE295; Special Conditions No. 23–235–SC]

Special Conditions: Embraer S.A. Model EMB–505; Full Authority Digital Engine Control (FADEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. Model EMB–505 airplane. This airplane will have a novel or unusual design feature(s) associated with the use of an electronic engine control system instead of a traditional mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 20, 2009. We must receive your comments by June 29, 2009.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Small Airplane Directorate, Attn: Rules Docket (ACE–7), Docket No. CE295, 901 Locust, Room 301, Kansas City, Missouri 64106. You may deliver two copies to the Small Airplane Directorate at the above address. Mark your comments: Docket No. CE295. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include

supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On October 9, 2006, Embraer S.A. applied for a type certificate for their new Model EMB–505. The EMB–505 is a twin engine jet which has applied for type certification in the commuter category. As such, the airplane is proposed to be type certificated in the commuter category of 14 CFR part 23 (and comparable Brazilian requirements RBHA 23) by exemption from 14 CFR 23.3(d). The EMB–505 is predominantly of metallic construction and is a conventionally configured low-wing monoplane with a T-tail and tricycle landing gear. The airplane's maximum takeoff weight is 17490 pounds. The V_{MO}/M_{MO} is 320 KCAS/M .78, with a maximum operating altitude of 45,000 feet. Requested operations are day/night VFR/IFR and icing operations.

The Embraer S.A. Model EMB–505 airplane is equipped with two Pratt and Whitney of Canada 3360 pound thrust PW535E turbofan engines, each using an electronic engine control system (FADEC) instead of a traditional mechanical control system. Even though the engine control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to critical environmental effects and possible effects on or by other airplane systems. For example, indirect effects of lightning, radio interference with other airplane electronic systems, shared engine and airplane data and power sources.

The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems and critical environmental effects, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned. Therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system.

In some cases, the airplane that the engine is used in will determine a higher classification (Advisory Circular (AC) 23.1309) than the engine controls are certificated for, which will require that the FADEC/DEEC systems be analyzed at a higher classification. Since November 2005, FADEC special conditions have mandated the classification for § 23.1309 analysis for loss of FADEC control as catastrophic for any airplane. This is not to imply that an engine failure is classified as catastrophic, but that the digital engine control must provide an equivalent reliability to mechanical engine controls.

Type Certification Basis

Under the provisions of 14 CFR § 21.17, Embraer S.A. must show that the Model EMB–505 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–55, thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model EMB–505 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–505 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as appropriate, as defined in 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Embraer S.A. Model EMB–505 will incorporate the following novel or unusual design features:

Electronic engine control system.

Applicability

As discussed above, these special conditions are applicable to the Model EMB–505. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model, Model EMB–505, of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer S.A. Model EMB–505 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer S.A. Model EMB–505 airplanes.

1. Electronic Engine Control

The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–55. The intent of this requirement is not to reevaluate the inherent hardware

reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement; however, the effects of the installation on this data must be addressed.

For these evaluations, the loss of FADEC control will be analyzed utilizing the threat levels associated with a catastrophic failure.

Issued in Kansas City, Missouri on May 20, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12417 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0119; Directorate Identifier 2008–CE–068–AD; Amendment 39–15916; AD 2009–11–06]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LP Models SA226–AT, SA226–T, SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, and SA227–DC (C–26B) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD 2008–12–16, which applies to certain M7 Aerospace LP SA226 and SA227 series airplanes. AD 2008–12–16 currently requires you to inspect wires and tube assemblies for chafing, arcing, or insufficient clearance between components. If chafing, arcing, or insufficient clearance between components is found, AD 2008–12–16 requires you to clear, repair, and/or replace all chafed wires, components, and tube assemblies. AD 2008–12–16 also requires you to cover the four-gauge wires leaving the battery box with firesleeving and secure them with a clamp. Since we issued AD 2008–12–16, M7 Aerospace LP has notified us that Model SA227–BC (C–26A) was inadvertently left out of the Applicability section of the AD, and they updated some of the service information due to parts availability. Operators have also identified issues with model applicability that needed clarification. Consequently, this AD retains the actions of AD 2008–12–16, adds Model SA227–BC (C–26A) to the Applicability section, and regroups the models for clarification. We are issuing this AD to detect and correct chafing of electrical wires, components, and tube assemblies. This condition could result in arcing of exposed wires with consequent burning of a hole in a hydraulic line or the bleed air line. This failure could lead to a hydraulic fluid leak and a possible fire in the engine nacelle compartment.

DATES: This AD becomes effective on July 2, 2009.

On July 2, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in Table 2 of this AD.

As of July 23, 2008 (73 FR 34615, June 18, 2008), the Director of the Federal Register approved the incorporation by reference of certain publications listed in Table 3 of this AD.

ADDRESSES: For service information identified in this AD, contact M7 Aerospace Repair Station, 10823 NE Entrance Road, San Antonio, Texas 78216; telephone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.m7aerospace.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–2009–0119; Directorate Identifier 2008–CE–068–AD.

FOR FURTHER INFORMATION CONTACT: Werner Koch, Aerospace Engineer, ASW–150, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5133; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

On February 6, 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 M7 Aerospace LP SA226 and SA227 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 12, 2009 (74 FR 7006). The NPRM proposed to supersede AD 2008–12–16 with a new AD that would retain the actions of AD 2008–12–16, add the Model SA227–BC (C–26A) to the Applicability section, and regroup the models for clarification.

Comments

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

Comment Issue: Inspection Applicability

George L. Smith commented that it was unclear if paragraph (e)(3) of the AD applied to airplanes with batteries mounted in the nose of the airplane or if the AD only applied to airplanes with the battery located in the wing leading edge.

As specified in the Applicability section, this AD applies to all serial numbers regardless of where the battery is located. Therefore the actions required in paragraph (e)(3) of this AD apply to all airplanes listed in the Applicability section regardless of where the battery is located. For added clarity we are adding the applicable serial numbers to the paragraph.

We are changing the final rule AD by adding the applicable serial numbers to each 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 the change previously discussed and 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 268 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	Not Applicable	$320	$85,760

We estimate the following costs to do any necessary modifications for certain Models SA226–AT, SA226–T, SA226–TC, SA227–AC, and SA227–AT airplanes referenced in M7 Aerospace SA226 Series Service Bulletin 226–24–019, revised: November 21, 2008; or M7 Aerospace SA227 Series Service Bulletin 227–24–001, revised: November 21, 2008. We estimate 88 airplanes may need this modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
13 work-hours × $80 per hour = $1,040	$7	$1,047	$92,136

We estimate the following costs to do any necessary repairs for certain Models SA226–AT, SA226–TC, SA227–AC, and SA227–AT referenced in M7 Aerospace SA226 Series Service Bulletin 226–24–020, revised: August 4, 2008; or M7 Aerospace SA227 Series Service Bulletin 227–24–002, revised: November 21, 2008. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
50 work-hours × $80 per hour = $4,000	$3,000	$7,000

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–2009–0119; Directorate Identifier 2008–CE–068–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. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–12–16, Amendment 39–15560 (73 FR 34615, June 18, 2008), and adding the following new AD:

2009–11–06 M7 Aerospace LP: Amendment 39–15916; Docket No. FAA–2009–0119; Directorate Identifier 2008–CE–068–AD.

Effective Date

(a) This AD becomes effective on July 2, 2009.

Affected ADs

(b) This AD supersedes AD 2008–12–16, Amendment 39–15560.

Applicability

(c) This AD applies to Models SA226–AT, SA226–T, SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, and SA227–DC (C–26B) airplanes, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from five reports of chafing between the bleed air tube assembly and the electrical starter cables on M7 Aerospace LP SA226 and SA227 series airplanes with one incident resulting in a fire. We are issuing this AD to detect and correct chafing of electrical wires and components, hydraulic tube assemblies, and bleed air tube assemblies. This condition could result in arcing of the exposed wires with consequent burning of a hole in a hydraulic line or the bleed air line. This failure could lead to a possible hydraulic fluid leak and fire in the engine nacelle compartment.

Compliance

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

TABLE 1—ACTIONS, COMPLIANCE, AND PROCEDURES

Actions	Compliance	Procedures
(1) For the following model and serial number (S/N) airplanes, inspect the main battery leads running forward from the battery compartment for deterioration, cover the four-gauge wires leaving the battery box with firesleeving, and secure them with a clamp: (i) SA226–AT, S/N AT–001 through AT–419; (ii) SA226–T, S/N T–201 through T–248; (iii) SA226–TC, S/N TC–201 through TC–419; (iv) SA227–AC (C–26A), S/N AC–420 through AC–539, AC–541, AC–543, AC–544, AC–547 through AC–551; and (v) SA227–AT, S/N AT–423 through AT–551.	Within 250 hours time-in-service (TIS) after July 23, 2008 (the effective date of AD 2008–12–16).	Use the following service information as applicable: (A) For Models SA226–AT, SA226–T, and SA226–TC airplanes: Follow M7 Aerospace SA226 Series Service Bulletin No. 226–24–019, revised: November 21, 2008; or Fairchild Aircraft Corporation SA226 Series Service Bulletin No. SB 24–019, revised: May 17, 1983; or (B) For Models SA227–AC (C–26A) and SA227–AT airplanes: Follow M7 Aerospace SA227 Series Service Bulletin No. 227–24–001, revised: November 21, 2008; or Fairchild Aircraft Corporation SA227 Series Service Bulletin No. SB24–001, revised: May 17, 1983.
(2) For the following model and S/N airplanes, reroute the hydraulic tube assemblies in the right wing leading edge, reroute the battery cables and 22-gauge wire bundle, and install a new access panel forward of the battery box: (i) SA226–AT, S/N AT–001 through AT–074; (ii) SA226–TC, S/N TC–201 through TC–419; (iii) SA227–AC (C–26A), S/N AC–420 through AC–539, AC–541, AC–543, AC–544, AC–547 through AC–550; and (iv) SA227–AT, S/N AT–423 through AT–551.	Before further flight after the modification required in paragraph (e)(1) of this AD and you were not able to obtain a minimum 0.50-inch clearance between the bleed air line and the tubing on the battery cables.	Use the following service information as applicable: (A) For Models SA226–AT, and SA226–TC airplanes: Follow M7 Aerospace SA226 Series Service Bulletin No. 226–24–020, revised: August 4, 2008; or Fairchild Aircraft Corporation SA226 Series Service Bulletin No. SB 24–020, revised: February 15, 1984; or (B) For Models SA227–AC (C–26A) and SA227–AT, airplanes: Follow M7 Aerospace SA227 Series Service Bulletin No. 227–24–002, revised: November 21, 2008; or Fairchild Aircraft Corporation SA227 Series Service Bulletin No. SB24–002, revised: February 15, 1984.
(3) For model SA226–AT, SA226–T, SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–CC, and SA227–DC (C–26B) airplanes, all S/N: Inspect electrical wires and components, hydraulic tube assemblies, and bleed air tube assemblies at the left hand and right hand (LH/RH) inboard wing leading edge/battery box areas, LH/RH wing stations 51.167 to 81.174, and at all feed-through locations into the LH/RH inboard keelson for any evidence of chafing or arcing.	Within 250 hours TIS after July 23, 2008 (the effective date of AD 2008–12–16). Repetitively thereafter inspect at intervals not to exceed 12 months.	Use the following service information as applicable: (i) For Models SA226–AT, SA226–T, and SA226–TC airplanes: Follow M7 Aerospace SA226 Series Service Bulletin No. 226–24–036, revised November 21, 2008; or M7 Aerospace SA226 Series Service Bulletin No. 226–24–036, issued: September 19, 2007; (ii) For Models SA227–AC (C–26A) and SA227–AT, airplanes: Follow M7 Aerospace SA227 Series Service Bulletin No. 227–24–019, revised: November 21, 2008; or M7 Aerospace SA227 Series Service Bulletin No. 227–24–019, issued: September 19, 2007; or (iii) For Models SA227–CC and SA227–DC (C–26B) airplanes: Follow SA227 Series Commuter Category Service Bulletin No. CC7–24–010, revised November 21, 2008; or SA227 Series Commuter Category Service Bulletin No. CC7–24–010, issued September 19, 2007.
(4) For model SA227–BC (C–26A) airplanes, all S/N: Inspect the main battery leads running forward from the battery compartment for any evidence of insulation deterioration.	Within 250 hours TIS after July 2, 2009 (the effective date of this AD).	Follow M7 Aerospace SA227 Series Service Bulletin No. 227–24–001, revised: November 21, 2008.
(5) For model SA227–BC (C–26A) airplanes, all S/N: Inspect electrical wires and components, hydraulic tube assemblies, and bleed air tube assemblies at LH/RH inboard wing leading edge/battery box areas, LH/RH wing stations 51.167 to 81.174, and at all feed-through locations into the LH/RH inboard keelson for any evidence of insulation deterioration, chafing, or arcing.	Within 250 hours TIS after July 2, 2009 (the effective date of this AD). Repetitively thereafter inspect at intervals not to exceed 12 months.	Follow M7 Aerospace SA227 Series Service Bulletin No. 227–24–019, revised: November 21, 2008.

TABLE 1—ACTIONS, COMPLIANCE, AND PROCEDURES—Continued

Actions	Compliance	Procedures
(6) For all model and S/N airplanes: Clear, repair, and/or replace all electrical wires and components, hydraulic tube assemblies, and bleed air tube assemblies, in the inspection area and feed-through locations that show any sign of insulation deterioration, chafing, or arcing, as required.	Before further flight after any inspection required in paragraphs (e)(1), (e)(3), (e)(4), and (e)(5) of this AD where any evidence of insulation deterioration, chafing, or arcing was found.	Use the service information from paragraphs (e)(1), (e)(3), (e)(4), and (e)(5) of this AD, as applicable.

Note: Although not a requirement of this AD, you may incorporate Swearingen Aviation Corporation SA226 Series Service Bulletin No. 57–010, revised: December 5, 1975, on those airplanes that have not installed the access panel. Installation of the access panel will simplify the incorporation of the service bulletins referenced in this AD and future inspections of the areas of concern.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, 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: Werner Koch, Aerospace Engineer, ASW–150, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5133; fax: (817) 222–5960. 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

(g) You must use the service information specified in Table 2 or Table 3 of this AD 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 the service information listed in Table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin No.	Date
(i) M7 Aerospace SA226 Series Service Bulletin No. 226–24–019	Revised: November 21, 2008.
(ii) M7 Aerospace SA226 Series Service Bulletin No. 226–24–020	Revised: August 4, 2008.
(iii) M7 Aerospace SA226 Series Service Bulletin No. 226–24–036	Revised: November 21, 2008.
(iv) M7 Aerospace SA227 Series Service Bulletin No. 227–24–001	Revised: November 21, 2008.
(v) M7 Aerospace SA227 Series Service Bulletin No. 227–24–002	Revised: November 21, 2008.
(vi) M7 Aerospace SA227 Series Service Bulletin No. 227–24–019	Revised: November 21, 2008.
(vii) M7 Aerospace SA227 Series Commuter Category Service Bulletin No. CC7–24–010	Revised: November 21, 2008.

(2) On July 23, 2008 (73 FR 34615, June 18, 2008), the Director of the Federal Register approved the incorporation by reference of the service information listed in Table 3 of this AD.

TABLE 3—PREVIOUS MATERIAL INCORPORATED BY REFERENCE

Service Bulletin No.	Date
(i) Fairchild Aircraft Corporation SA226 Series Service Bulletin No. SB 24–019	Revised: May 17, 1983.
(ii) Fairchild Aircraft Corporation SA226 Series Service Bulletin No. SB 24–020	Revised: February 15, 1984.
(iii) M7 Aerospace SA226 Series Service Bulletin No. 226–24–036	Issued: September 19, 2007.
(iv) Fairchild Aircraft Corporation SA227 Series Service Bulletin No. SB24–001	Revised: May 17, 1983.
(v) Fairchild Aircraft Corporation SA227 Series Service Bulletin No. SB24–002	Revised: February 15, 1984.
(vi) M7 Aerospace SA227 Series Service Bulletin No. 227–24–019	Issued: September 19, 2007.
(vii) M7 Aerospace SA227 Series Commuter Category Service Bulletin No. CC7–24–010	Issued: September 19, 2007.

(3) For service information identified in this AD, contact M7 Aerospace Repair Station, 10823 NE Entrance Road, San Antonio, Texas 78216; telephone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.m7aerospace.com*.

(4) 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.

(5) 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 May 18, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11989 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0482; Directorate Identifier 2008–SW–54–AD; Amendment 39–15920; AD 2009–11–10]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (Eurocopter) Model EC135 helicopters. This AD results from a report of abnormal main rotor blade vibrations on a Eurocopter Model EC135 helicopter. This AD also results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI states that an operator reported unusual vibrations during the start phase of the main rotor blade on one helicopter. The vibrations stopped after the application of torque. Subsequent maintenance personnel found that six of the eight attachment screws of the lower hub-shaft bearing support were loose. This condition was discovered in two additional helicopters. Loose screws in the bearing support, if not detected and corrected, could result in abnormal main rotor blade vibrations and subsequent damage to the main transmission.

DATES: This AD becomes effective on June 12, 2009.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of June 12, 2009.

We must receive comments on this AD by July 27, 2009.

ADDRESSES: You may send comments by any of the following methods:

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

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com*.

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

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We recently received a report of abnormal main rotor blade vibration on a Eurocopter Model EC135 helicopter. This main rotor blade vibration occurred after initial aircraft start, while operating at flat pitch, between 8.5 and 25 percent torque and 98.6 percent NR/N2 speed, and dissipated once the FADEC switches were advanced to FLIGHT. The main rotor transmission chip light also illuminated with minimal debris found on the chip detectors. During troubleshooting, six of the eight main transmission lower hub-shaft bearing support bolts were found lying in the bottom of the main transmission case, atop of the lower transmission access panel. Only two of the eight bolts remained installed, loose in their positions, and the outer race of the roller bearing was rotated out of position (cocked). Approximately three weeks after that first incident, we received a report that loose bolts were discovered on two additional newer helicopters that had not been inspected at the time the loose bolts were discovered on the first helicopter. Subsequent investigations revealed that screws were not properly torqued and vibrations had caused the screws to back-out. Loosened screws in the bearing support, if not detected and corrected, could result in abnormal main rotor blade vibrations and subsequent damage to the main transmission.

EASA has issued EASA Emergency AD 2008–0175–E, dated September 16, 2008, to correct an unsafe condition for the Eurocopter Model EC135 helicopters. The MCAI explains that ''The lower hub-shaft bearing consists of a ball bearing and a roller bearing. The outer race of the roller bearing is fixed to the housing with screws. Should all attachment screws become loose, the outer race of the roller bearing might separate, which would constitute an unsafe condition. In such case, however, the axial guidance of the rotor hub-shaft would still be ensured.'' The MCAI requires inspecting the main transmission attachment hardware and installing locking washers. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Related Service Information

Eurocopter has issued Alert Service Bulletin EC135–63A–013, Revision 2, dated September 12, 2008 (ASB). The ASB specifies checking the screws at the lower hub-shaft bearing for correct attachment and securing attachment hardware by means of locking washers. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Differences Between This AD and the MCAI AD

This AD does not require sending the main transmission to the manufacturer and does not refer to the transmission part numbers. Also, this AD uses the term ''hours time-in-service'', the MCAI AD uses the term ''flight cycles''.

Costs of Compliance

We estimate that this AD will affect about 189 helicopters of U.S. registry. We also estimate that it will take about 8 work-hours to inspect and install lock washers, at an average labor rate of $80 per work-hour. Required parts will cost about $574 per helicopter ($86 for the lock washers and $488 for the required oil). Based on these figures, we estimate the cost of this AD on U.S. operators will be $229,446 ($1,214 per helicopter).

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because loosened screws in the bearing support, if not detected and corrected quickly, could result in abnormal main rotor blade vibrations and subsequent damage to the main transmission. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include ''Docket No. FAA–2009–0482; Directorate Identifier 2008–SW–54–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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 product(s) 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.

Therefore, 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 an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

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:

2009–11–10 Eurocopter Deutschland GmbH: Amendment 39–15920. Docket No. FAA–2009–0482; Directorate Identifier 2008–SW–54–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on June 12, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Eurocopter Deutschland GmbH (Eurocopter) Model EC135 helicopters with a main transmission with a serial number of 0001 through 1420 and 1500 through 1749 installed, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that an operator reported unusual vibrations during the start phase of the main rotor blade on one helicopter. The vibrations stopped after the application of torque. Subsequently, maintenance personnel found that six of the eight attachment screws of the lower hub-shaft bearing support were loose. This condition was discovered in two additional helicopters. Loose screws in the bearing support, if not detected and corrected, could result in abnormal main rotor blade vibrations and subsequent damage to the main transmission.

Actions and Compliance

(e) Within 3 hours time-in-service (TIS) if unusual vibrations are detected during the start phase or the shutdown phase when the main rotors are not at full operation RPM, or within 50 hours TIS after the effective date of this AD, whichever occurs first, do the following:

(1) Remove the lower transmission cover.

Note 1: You may drain the oil into a clean container so that it can be reused.

(2) Measure the clearance between the outer race and the transmission housing at four positions offset by 90° using a feeler gauge as depicted in Figure 1 of Eurocopter

Alert Service Bulletin EC135–63A–013, Revision 02, dated September 12, 2008 (ASB). If the measured maximum clearance is:

(i) Less than or equal to 0.1 mm—install locking washers, tighten all screws, and re-measure the clearance by following paragraphs 3.B.(3) through 3.B.(7) of the ASB.

(ii) More than 0.1 mm—determine the difference between the smallest and the largest clearance and:

(A) If the difference is less than 0.4 mm—install locking washers, tighten all screws, and re-measure the clearance by following paragraphs 3.B.(2) through 3.B.(7) of the ASB.

(B) If the difference is equal to or more than 0.4 mm—replace the transmission before further flight with an airworthy transmission that has been modified in accordance with paragraph 3.B. of the ASB.

(iii) If the re-measured clearances obtained in accordance with paragraphs (e)(2)(i) or (e)(2)(ii)(A) of this AD are not less than or equal to 0.05 mm, replace the transmission with an airworthy transmission that has been modified in accordance with paragraph 3.B. of the ASB.

(3) Reinstall the lower transmission cover and replenish the transmission oil.

Note 2: If the transmission oil was drained into a clean container, it can be reused. Also, if the O-ring on the lower transmission cover is not damaged, it can be reused once.

(f) After the effective date of this AD, install only main transmissions that have been modified in accordance with paragraph 3.B.(3) of the ASB.

Differences Between This AD and the MCAI AD

(g) This AD does not require sending the main transmission to the manufacturer and does not refer to the transmission part numbers. Also, this AD uses the term ''hours time-in-service'', the MCAI AD uses the term ''flight cycles''.

Other Information

(h) The Manager, Safety Management Group, FAA, ATTN: Chinh Vuong, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5116, fax (817) 222–5961 has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) European Aviation Safety Agency (EASA) MCAI Emergency AD No. 2008–0175–E, dated September 16, 2008, contains related information.

Air Transport Association of America (ATA) Tracking Code

(j) ATA Code 63: Main rotor drive.

Material Incorporated by Reference

(k) You must use the specified portions of Eurocopter Alert Service Bulletin EC135–63A–013, Revision 02, dated September 12, 2008, to do the actions required.

(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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com*.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or 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/cfr/ibr-locations.html*.

Issued in Fort Worth, Texas on May 19, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–12319 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0478; Directorate Identifier 2008–NM–133–AD; Amendment 39–15917; AD 2009–11–07]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Airplanes

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

ACTION: Final rule; request for comments.

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:

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems (Operations) Limited has revised the HS.748 Aircraft Maintenance Manual (AMM), now at Revision 19, to introduce Chapter 05–10–00 ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''. The CDCCLs provide instructions to retain critical ignition source prevention features during configuration changes that may be caused by modification, repair or maintenance actions.

The CDCCLs have been identified as requirements for continued airworthiness to address the risk of fuel vapour ignition sources remaining undetected. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the aircraft.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective June 12, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication, listed in the AD as of June 12, 2009.

We must receive comments on this AD by June 29, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0125, dated July 2, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems (Operations) Limited has revised the HS.748 Aircraft Maintenance Manual (AMM), now at Revision 19, to introduce Chapter 05–10–00 ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''. The CDCCLs provide instructions to retain critical ignition source prevention features during configuration changes that may be caused by modification, repair or maintenance actions.

The CDCCLs have been identified as requirements for continued airworthiness to address the risk of fuel vapour ignition sources remaining undetected. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the aircraft.

* * * * *

The required action is revising the maintenance program to include the CDCCL data. CDCCLs are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

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

Relevant Service Information

BAE Systems (Operations) Limited has issued Subsection 05–10–00, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System,'' of HS 748 Aircraft Maintenance Manual (AMM), Revision 19, dated January 15, 2008. The actions described in the CDCCL are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0478; Directorate Identifier 2008–NM–133–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

substantive verbal contact we receive about this AD.

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.

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:

2009–11–07 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–15917. Docket No. FAA–2009–0478; Directorate Identifier 2009–NM–133–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 12, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model HS 748 series 2A and series 2B airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Resulting from the assessment of fuel tank wiring installations required by SFAR 88 (Special Federal Aviation Regulation) and equivalent JAA/EASA (Joint Aviation Authorities/European Aviation Safety Agency) policy, BAE Systems (Operations) Limited has revised the HS.748 Aircraft Maintenance Manual (AMM), now at Revision 19, to introduce Chapter 05–10–00 ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''. The CDCCLs provide instructions to retain critical ignition source prevention features during configuration changes that may be caused by modification, repair or maintenance actions.

The CDCCLs have been identified as requirements for continued airworthiness to address the risk of fuel vapour ignition sources remaining undetected. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the aircraft.

* * * * *

The required action is revising the maintenance program to include the CDCCL data.

Actions and Compliance

(f) Unless already done, within 3 months after the effective date of this AD, revise the maintenance program to incorporate the CDCCL information specified in Subsection 05–10–00, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System,'' of BAE Systems (Operations) Limited HS 748 Aircraft Maintenance Manual (AMM), Revision 19, dated January 15, 2008. Thereafter, no alternative CDCCL may be used unless approved as an alternative method of compliance in accordance with the procedures specified in paragraph (g)(1) of this AD.

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: 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.

(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, 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 Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0125, dated July 2, 2008, and Subsection 05–10–00, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel system,'' Revision 19, dated January 15, 2008, of BAE Systems (Operations) Limited HS 748 AMM, for related information.

Material Incorporated by Reference

(i) You must use Subsection 05–10–00, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System,'' of BAE Systems (Operations) Limited HS 748 AMM, Revision 19, dated January 15, 2008, to do the actions required by this AD, unless the AD specifies otherwise. BAE Systems (Operations) Limited HS 748 AMM, Revision 19, dated January 15, 2008, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page number(s)	Revision number	Date shown on page(s)
AMM Title Page	1	19	January 15, 2008.
Chapter 05 List of Effective Pages:	1–2	*	January 15, 2008.
Subsection 05–10–00:	1–2	*	January 15, 2008.

* Not shown.

(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 BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

(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 May 15, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11997 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0486; Directorate Identifier 2009–NM–064–AD; Amendment 39–15919; AD 2009–11–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Airplanes and Airbus Model A300–600 Airplanes

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

ACTION: Final rule; request for comments.

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:

An A300–600 operator reported a recent event which occurred during the take-off roll, where a SOGERMA co-pilot seat slid back uncommanded to the end position. The seat horizontal movement actuator was replaced on the affected co-pilot seat. At the following take-off roll the same event occurred, the co-pilot seat sliding back uncommanded again. * * *

An unwanted movement of pilot or co-pilot seat in the horizontal direction is considered as potentially unsafe, especially during the take-off phase when the speed of the aeroplane is greater than 100 knots and until landing gear retraction.

* * * * *

Uncommanded movement of the pilot and co-pilot seats during takeoff or landing could interfere with the operation of the airplane and, as a result, could cause consequent loss of control of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective June 12, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 12, 2009.

We must receive comments on this AD by June 29, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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

The European Aviation Safety Agency, which is the aviation authority for the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2009–0084, dated April 9, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An A300–600 operator reported a recent event which occurred during the take-off roll, where a SOGERMA co-pilot seat slid back uncommanded to the end position. The seat horizontal movement actuator was replaced on the affected co-pilot seat. At the following take-off roll the same event occurred, the co-pilot seat sliding back uncommanded again. Further to these events, the inspection carried out on the two removed actuators ARTUS Part Number (P/N) RT19H4FX, revealed that the clutch was broken inside the shaft, thus unlocking the seat horizontal movement.

An unwanted movement of pilot or co-pilot seat in the horizontal direction is considered as potentially unsafe, especially during the take-off phase when the speed of the aeroplane is greater than 100 knots and until landing gear retraction.

For the reasons described above and pending the development of a permanent solution, this AD requires the deactivation of the electrical powered SOGERMA pilot seats

2510112 series and co-pilot seats 2510113 series.

In addition, this AD provides two (optional) interim solutions in order to restore a partial seat electrical adjustment (vertical only) or a full seat electrical adjustment (vertical and horizontal) by accomplishment of intermediate actions.

Uncommanded movement of the pilot and co-pilot seats during takeoff or landing could interfere with the operation of the airplane and, as a result, could cause consequent loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A310–25A2203, Revision 02, dated March 2, 2009; and AOT A300–25A6215, Revision 02, dated March 2, 2009. EADS SOGERMA has issued Alert Service Bulletin A2510112–25–764, Revision 1, dated February 17, 2009; and Inspection Service Bulletin 2510112–25–807, dated February 20, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the 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 FAA policies. Any such differences are highlighted in a Note within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because an uncommanded movement of the pilot and co-pilot seats during takeoff or landing could cause consequent loss of control of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0486; Directorate Identifier 2009–NM–064–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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.

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:

2009–11–09 Airbus: Amendment 39–15919. Docket No. FAA–2009–0486; Directorate Identifier 2009–NM–064–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 12, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–203, A310–204, A310–221, A310–222, A310–304, A310–322, A310–324, and A310–325 airplanes; and Airbus Model A300 B4–601, A300 B4–603, A300 B4–605R, A300 B4–620, A300 B4–622, A300 B4–622R, A300 C4–605R Variant F, A300 F4–605R and A300 F4–622R airplanes; certificated in any category; all serial numbers having SOGERMA 2510112 series pilot electrical seats or SOGERMA 2510113 series co-pilot electrical seats installed.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

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

An A300–600 operator reported a recent event which occurred during the take-off roll, where a SOGERMA co-pilot seat slid back uncommanded to the end position. The seat horizontal movement actuator was replaced on the affected co-pilot seat. At the following take-off roll the same event occurred, the co-pilot seat sliding back uncommanded again. Further to these events, the inspection carried out on the two removed actuators ARTUS Part Number (P/N) RT19H4FX, revealed that the clutch was broken inside the shaft, thus unlocking the seat horizontal movement.

An unwanted movement of pilot or co-pilot seat in the horizontal direction is considered as potentially unsafe, especially during the take-off phase when the speed of the aeroplane is greater than 100 knots and until landing gear retraction.

For the reasons described above and pending the development of a permanent solution, this AD requires the deactivation of the electrical powered SOGERMA pilot seats 2510112 series and co-pilot seats 2510113 series.

In addition, this AD provides two (optional) interim solutions in order to restore a partial seat electrical adjustment (vertical only) or a full seat electrical adjustment (vertical and horizontal) by accomplishment of intermediate actions.

Uncommanded movement of the pilot and co-pilot seats during takeoff or landing could interfere with the operation of the airplane and, as a result, could cause consequent loss of control of the airplane.

Actions and Compliance

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

(1) Within 15 days after the effective date of this AD: Deactivate the electrical supply of SOGERMA 2510112 series pilot seats and SOGERMA 2510113 series co-pilot seats, in accordance with the instructions of Airbus All Operators Telex (AOT) A310–25A2203, Revision 02, dated March 2, 2009; or AOT A300–25A6215, Revision 02, dated March 2, 2009; as applicable.

(2) For optional intermediate action for restoration of the electrical adjustment of the vertical seat movement only: Deactivating the electrical powered horizontal movement of SOGERMA 2510112 series pilot seats or SOGERMA 2510113 series co-pilot seats, in accordance with the instructions of EADS SOGERMA Alert Service Bulletin A2510112–25–764, Revision 1, dated February 17, 2009, allows restoration of the vertical adjustment only.

(3) For optional intermediate action for restoration of the electrical adjustment of the vertical seat and horizontal seat movement: Inspecting the position of switch 'S4' and the related shim of SOGERMA 2510112 series pilot seats or SOGERMA 2510113 series co-pilot seats, in accordance with EADS SOGERMA Inspection Service Bulletin 2510112–25–807, dated February 20, 2009, allows reactivation of both horizontal and vertical electrical movements, provided the measurement results of the inspection are within the acceptable value indicated in the service bulletin, and provided that the inspection is repeated thereafter at intervals not to exceed 2 months. If the measurement result of any inspection is not within the acceptable value indicated in the EADS SOGERMA Inspection Service Bulletin 2510112–25–807, dated February 20, 2009, the horizontal movement must be deactivated before further flight.

(4) At the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD: Submit a report of the findings for the first inspection done in accordance with paragraph (f)(3) of this AD to Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. The report must include a detailed fleet inspection report, including measurement values, and pin and serial numbers for each seat.

(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 accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(5) Modifications made prior to the effective date of this AD in accordance with EADS SOGERMA Alert Service Bulletin A2510112–25–764, dated December 19, 2008, are considered acceptable for compliance with the applicable action specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: None.

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, 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 2009–0084, dated April 9, 2009; and the service information listed in Table 1 of this AD for related information.

TABLE 1—RELATED SERVICE INFORMATION

Document	Revision level	Date
Airbus All Operators Telex A300–25A6215	02	March 2, 2009.
Airbus All Operators Telex A310–25A2203	02	March 2, 2009.
EADS SOGERMA Alert Service Bulletin A2510112–25–764	1	February 17, 2009.
EADS SOGERMA Inspection Service Bulletin 2510112–25–807	([1])	February 20, 2009.

[1] Original.

Material Incorporated by Reference

(i) You must use Airbus All Operators Telex A310–25A2203, Revision 02, dated March 2, 2009; or Airbus All Operators Telex A300–25A6215, Revision 02, dated March 2, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. If you do the optional actions specified by this AD, you must use EADS SOGERMA Inspection Service Bulletin 2510112–25–807, dated February 20, 2009; or EADS SOGERMA Alert Service Bulletin A2510112–25–764, Revision 1, dated February 17, 2009; as applicable; to perform those actions, 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 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 May 15, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12322 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0453; Directorate Identifier 2008–SW–63–AD; Amendment 39–15911; AD 2009–11–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the specified ECD model helicopters that currently requires initial and repetitive inspections of the main rotor blade (blade) upper and lower surfaces for bulging. This AD results from mandatory continuing airworthiness information (MCAI) issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, based on reported incidents in which a balance weight migrated toward the tip of the blade. The MCAI states that new blades have become available that are not fitted with lead balance weights. The MCAI states that only blades equipped with a lead balance weight may result in the unsafe condition. This AD retains the requirements of the current AD but limits the applicability to those part-numbered blades that are fitted with lead balance weights. The actions are intended to limit the applicability to those blades fitted with lead balance weights that could detach, migrate, and cause severe vibrations leading to blade failure and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on June 12, 2009.

We must receive comments on this AD by July 27, 2009.

ADDRESSES: You may send comments by any of the following methods:

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

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com.*

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

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2008–0156, dated August 19, 2008, to supersede Luftfahrt-Bundesamt (LBA) Germany AD D–1994–280R3 (EASA approval 2005–6229) issued on September 19, 2005. Since the LBA AD was issued, new blades have become available that do not have lead balance weights. The LBA AD was issued following reports of two flight incidents involving balance weights detaching from the blade structure and migrating toward the tip of the blade causing severe vibrations. The centrifugal force on the blades can bring about creep deformation of the lead balance weight resulting in bulging of the blade skin. The height of such bulges is the criteria for assessing the extent of possible damage to the structure around the lead balance weight and the possibility of blade failure. The EASA AD states, ''only MR blades equipped with a lead balance weight are affected by this unsafe condition.'' The EASA AD also states that current requirements are retained but limits the applicability to those part-numbered blades that are fitted with lead balance weights. The actions are intended to limit the applicability to those blades with lead balance weights that could detach, migrate, and cause severe vibrations leading to blade failure and subsequent loss of control of the helicopter.

You may obtain further information by examining the MCAI and any related service information in the AD docket.

Related Service Information

ECD has issued Alert Service Bulletin MBB–BK117–10–108, Revision 3, dated August 7, 2008 (ASB). This ASB limits the applicability to certain part-numbered blades with a lead balance weight. This ASB replaces Revision 2. Revision 3 of the ASB states that if one of the previous revisions has been done, no further work is required due to Revision 3. The ASB notes that ''the inspection interval was incorporated in the MBB–BK117 Maintenance Manual (MM) with Revision No. 24 (for MBB–BK117 A–1 through B–2) and with Revision No. 5 (for MBB–BK117 C–1).'' The ASB also notes that ''provided that the first inspection has been accomplished during 5 flight hours and upon availability of these changes in the MM, the ASB–MBB–BK117–10–108 will no longer be effective.'' The ASB further states that if one of the editions of this ASB before Revision 3 has been done, you should inspect the blades for bulging by following the MM and at the

intervals stated in the MM with the first inspection for bulging to be done after 1,800 flight hours time since new. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These ECD model helicopters have been approved by the aviation authority of the Federal Republic of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with the Federal Republic of Germany, their Technical Agent has notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other ECD model helicopters of these same type designs.

Differences Between This AD and the MCAI AD

We refer to flight hours as hours time-in-service. We retained the compliance time from the current AD and the Eurocopter ASB, dated August 18, 1994, and did not include the option of accumulating 1,800 flight hours since the first flight as stated in the MCAI. We do not incorporate ASB, Revision 3, damage inspection. We do not require that you contact ECD for instructions for corrective action. This AD requires that you contact the FAA for an Alternate Method of Compliance.

Costs of Compliance

We estimate that this AD will affect about 30 helicopters of U.S. registry. We also estimate that it will take about ½ work-hour per helicopter to inspect each blade. The average labor rate is $80 per work-hour. Required parts will cost about $87,000 per blade. Based on these figures, we estimate the cost of this AD on U.S. operators will be $102,600, assuming 1 initial and 12 recurring inspections of the blade during the first year and 1 blade replacement.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the initial inspection time is within 5 hours TIS. There is a significant unjustified burden on operators who have replaced their blades with redesigned part numbered blades because the inspection need not apply to those blades. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include "Docket No. FAA–2009–0453; Directorate Identifier 2008–SW–63–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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 product(s) 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.

Therefore, 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 an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 39–9399 (60 FR 53507, October 16, 1995) and by adding the following new AD:

2009–11–01 Eurocopter Deutschland GmbH: Amendment 39–15911. Docket No. FAA–2009–0453; Directorate Identifier 2008–SW–63–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on June 12, 2009

Other Affected ADs

(b) Supersedes AD 95–21–12, Amendment No. 39–9399, Docket Number 94–SW–19–AD (60 FR 53507, October 16, 1995).

Applicability

(c) This AD applies to Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, certificated in any category, with the following main rotor blade (blade) installed:

BLADE PART NUMBER (P/N)
117–15001
117–150021
117–150061
117–151321
117–151341, 117–151341V001
117–151351, 117–151351V001
117–151361, 117–151361V001
117–151421V001
117–151441, 117–151441V001

BLADE PART NUMBER (P/N)—Continued
117–151441V002, 117–151441V003
117–151451, 117–151451V001
117–151451V002, 117–151451V003
117–151461, 117–151461V001

Reason

(d) Redesigned blades have become available that are not fitted with lead balance weights. Only a blade equipped with a lead balance weight may contain the unsafe condition. This AD retains the requirements of the current AD but limits the applicability to those part-numbered blades that are fitted with lead balance weights. The actions are intended to detect the blades fitted with lead balance weights that could move and cause severe vibrations leading to blade failure and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Required as indicated:

(1) Within 5 hours time-in-service (TIS), unless already done, and thereafter at intervals not to exceed 50 hours TIS, visually inspect the upper and lower surfaces of each affected main rotor blade (blade) in the area of the outboard lead balance weight in the marked inspection area for bulging.

(i) If a marked inspection area is not visible, mark the area using a water-resistant and indelible marking pencil and then inspect the upper and lower surfaces of each blade in the area of the outboard lead balance weight for bulging.

Note: For guidance, the current MBB–BK117 Maintenance Manual at Figure 14–5A contains the dimensions and placement of the inspection area.

(ii) If bulging exceeds 1 millimeter (mm) (0.040 inch) in height, before further flight, remove the blade and replace it with an airworthy blade that is not listed in the applicability of this AD.

(2) Replacing the affected blade with an airworthy blade that is not listed in the applicability of this AD is terminating action for the requirements of this AD.

Differences Between This AD and the MCAI AD

(f) We refer to flight hours as hours TIS. We retained the compliance time from the current AD and the Eurocopter ASB, dated August 18, 1994, and did not include the option of accumulating 1,800 flight hours since the first flight as stated in the MCAI. We do not incorporate ASB, Revision 3, damage inspection. We do not require that you contact ECD for instructions for corrective action. This AD requires that you contact the FAA for an Alternate Method of Compliance.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) European Aviation Safety Agency (EASA) AD No. 2008–0156, dated August 19, 2008, and Eurocopter Alert Service Bulletin MBB–BK117 No. ASB–MBB–BK117–10–108, Revision 3, dated August 7, 2008, contains related information.

Air Transport Association of America (ATA) Tracking Code

(i) ATA Code No. 6210 Main Rotor Blades.

Issued in Fort Worth, Texas, on May 7, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–12320 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0479; Directorate Identifier 2009–NM–006–AD; Amendment 39–15918; AD 2009–11–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–202, –223, –243, –301, –322, and –342 Airplanes

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

ACTION: Final rule; request for comments.

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:

During the A330 and A340 aircraft fatigue test, cracks appeared on the right and left sides between the crossing area of the keel angle fitting and the front spar of the Centre Wing Box (CWB). Several modifications have been introduced in the fleet in the area of frame [FR] 40 keel angle assembly in order to prevent these cracks. However the new design has caused interference between one fastener and the keel angle which was corrected by further local reprofiling of the keel angle horizontal flange. Analysis shows that without an inspection of this reprofiled area, the structural integrity of the area is impacted, which constitutes an unsafe condition.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective June 12, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 12, 2009.

We must receive comments on this AD by June 29, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0213, dated December 8, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During the A330 and A340 aircraft fatigue test, cracks appeared on the right and left sides between the crossing area of the keel angle fitting and the front spar of the Centre Wing Box (CWB). Several modifications have

been introduced in the fleet in the area of frame [FR] 40 keel angle assembly in order to prevent these cracks. However the new design has caused interference between one fastener and the keel angle which was corrected by further local reprofiling of the keel angle horizontal flange. Analysis shows that without an inspection of this reprofiled area, the structural integrity of the area is impacted, which constitutes an unsafe condition.

In order to maintain the structural integrity of the aircraft, this Airworthiness Directive (AD) requires a repetitive special detailed inspection [high frequency eddy current to detect cracking] on the horizontal flange of the keel beam in the area of first fastener hole aft of FR40, and in case of cracks to repair accordingly.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–53–3151, Revision 01, including Appendix 1, dated September 25, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0479; Directorate Identifier 2009–NM–006–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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.

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:

2009–11–08 Airbus: Amendment 39–15918. Docket No. FAA–2009–0479; Directorate Identifier 2009–NM–006–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 12, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–202, –223, –243, –301, –322 and –342 airplanes; certificated in any category; serial numbers 0177, 0181, 0183, 0184, 0188, 0189, 0191, 0195, 0198, 0200, 0203, 0205, 0206, 0209, 0211, 0219, 0222, 0223, 0224, 0226, 0229, 0230, 0231, 0232, 0234, 0238, 0240, 0241, 0244, 0247, 0248, 0249, 0250, 0251, 0253, 0254, and 0255.

Subject

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

Reason

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

During the A330 and A340 aircraft fatigue test, cracks appeared on the right and left

sides between the crossing area of the keel angle fitting and the front spar of the Centre Wing Box (CWB). Several modifications have been introduced in the fleet in the area of frame [FR] 40 keel angle assembly in order to prevent these cracks. However the new design has caused interference between one fastener and the keel angle which was corrected by further local reprofiling of the keel angle horizontal flange. Analysis shows that without an inspection of this reprofiled area, the structural integrity of the area is impacted, which constitutes an unsafe condition.

In order to maintain the structural integrity of the aircraft, this Airworthiness Directive (AD) requires a repetitive special detailed inspection [high frequency eddy current to detect cracking] on the horizontal flange of the keel beam in the area of first fastener hole aft of FR40 and in case of cracks to repair accordingly.

Actions and Compliance

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

(1) Within 90 days after the effective date of this AD, or at the applicable time specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, whichever occurs later, perform a special detailed (high frequency eddy current) inspection to detect cracking of the keel beam fitting horizontal flange edge at FR40 on the left-hand and right-hand sides of the fuselage, in accordance with the instructions of Airbus Mandatory Service Bulletin A330–53–3151, Revision 01, dated September 25, 2008.

(i) For Model A330–301, –322, and –342 airplanes: Before accumulating 14,500 total flight cycles or 37,000 total flight hours from the first flight of the airplane, whichever occurs first.

(ii) For Model A330–202, –223, and –243 airplanes: Before accumulating 14,100 total flight cycles or 70,600 total flight hours from the first flight of the airplane, whichever occurs first.

(2) If no crack is detected during the inspection required by paragraph (f)(1) of this AD, repeat the inspection specified in paragraph (f)(1) of this AD thereafter at intervals not to exceed the times specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(i) For Model A330–301, –322, and –342 airplanes: 6,230 flight cycles or 15,900 flight hours, whichever occurs first.

(ii) For Model A330–202, –223, and –243 airplanes: 6,060 flight cycles or 30,300 flight hours, whichever occurs first.

(3) If any crack is found during any inspection required by this AD, before further flight, contact Airbus and follow their corrective actions.

(4) Airplanes that have already been inspected prior to the effective date of this AD in accordance with the instructions of Airbus Service Bulletin A330–53–3151, dated December 6, 2005, are compliant with the requirements of paragraph (f)(1) of this AD (initial inspection). However, after the effective date of this AD, the repetitive inspections must be continued in accordance with the instructions of Airbus Mandatory Service Bulletin A330–53–3151, Revision 01, dated September 25, 2008, as specified in paragraph (f)(1) of this AD.

(5) At the applicable time specified in paragraph (f)(5)(i) or (f)(5)(ii) of this AD, submit a report of the results (both positive and negative) of the inspection required by paragraph (f)(1) of this AD, in accordance with Airbus Mandatory Service Bulletin A330–53–3151, Revision 01, dated September 25, 2008. Send the report to Airbus SAS—Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; Attention SEDCC1 Technical Data and Documentation Services, fax +33 5 61 93 28 06, e-mail *sb.reporting@airbus.com.*

(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 accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

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, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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.

(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, 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 (EASA) Airworthiness Directive 2008–0213, dated December 8, 2008; and Airbus Mandatory Service Bulletin A330–53–3151, Revision 01, dated September 25, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330–53–3151, Revision 01, including Appendix 1, dated September 25, 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 SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@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 May 15, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–12113 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30667 Amdt. No 3222]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient

use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 28, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the Federal Register expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 15, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 02 JUL 2009

Fairhope, AL, H L Sonny Callahan, RNAV (GPS) RWY 1, Amdt 1
Fairhope, AL, H L Sonny Callahan, RNAV (GPS) RWY 19, Amdt 1
Fairhope, AL, H L Sonny Callahan, VOR/DME–A, Amdt 6
Hamilton, AL, Marion County-Rankin Fite, RNAV (GPS) RWY 18, Orig
Hamilton, AL, Marion County-Rankin Fite, RNAV (GPS) RWY 36, Orig

Prescott, AZ, Ernest A. Love Field, RNAV (RNP) RWY 3R, Orig
Scottsdale, AZ, Scottsdale, RNAV (RNP) RWY 21, Orig
Scottsdale, AZ, Scottsdale, RNAV (RNP) Y RWY 3, Orig
Scottsdale, AZ, Scottsdale, RNAV (RNP) Z RWY 3, Orig
Chico, CA, Chico Muni, GPS RWY 13L, Orig, B, CANCELLED
Chico, CA, Chico Muni, GPS RWY 31R, Orig–C, CANCELLED
Chico, CA, Chico Muni, ILS OR LOC/DME RWY 13L, Amdt 11
Chico, CA, Chico Muni, RNAV (GPS) RWY 13L, Orig
Chico, CA, Chico Muni, RNAV (GPS) RWY 31R, Orig
San Diego/El Cajon, CA, Gillespie Field, RNAV (GPS) RWY 17, Amdt 1
Santa Maria, CA, Santa Maria Pub/Capt G Allan Hancock Fld, RNAV (GPS) RWY 30, Orig
Hayden, CO, Yampa Valley, Takeoff Minimums and Obstacle DP, Amdt 3
Titusville, FL, Space Coast Regional, ILS OR LOC RWY 36, Amdt 11
Titusville, FL, Space Coast Regional, RNAV (GPS) RWY 36, Orig
Titusville, FL, Space Coast Regional, RNAV (GPS) Z RWY 9, Orig
Burlington, IA, Southeast Iowa Rgnl, VOR/DME RWY 12, Amdt 6
Evansville, IN, Evansville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 8
Fort Wayne, IN, Fort Wayne Intl, ILS OR LOC RWY 5, ILS RWY 5 (CAT II), Amdt 15
Fort Wayne, IN, Fort Wayne Intl, ILS OR LOC RWY 32, Amdt 29
Fort Wayne, IN, Fort Wayne Intl, LOC BC RWY 14, Amdt 14
Fort Wayne, IN, Fort Wayne Intl, RADAR–1, Amdt 25
Fort Wayne, IN, Fort Wayne Intl, VOR OR TACAN RWY 5, Amdt 20
Fort Wayne, IN, Fort Wayne Intl, VOR OR TACAN RWY 14, Amdt 17
Richmond, IN, Richmond Muni, ILS OR LOC RWY 24, Amdt 1
Richmond, IN, Richmond Muni, RNAV (GPS) RWY 6, Orig
Richmond, IN, Richmond Muni, RNAV (GPS) RWY 24, Orig
Richmond, IN, Richmond Muni, Takeoff Minimums and Obstacle DP, Orig
Richmond, IN, Richmond Muni, VOR RWY 6, Amdt 12
Richmond, IN, Richmond Muni, VOR RWY 24, Amdt 13
Richmond, IN, Richmond Muni, VOR RWY 33, Amdt 2
Topeka, KS, Forbes Field, GPS RWY 3, Orig, CANCELLED
Topeka, KS, Forbes Field, GPS RWY 21, Orig, CANCELLED
Topeka, KS, Forbes Field, RNAV (GPS) RWY 3, Orig
Topeka, KS, Forbes Field, RNAV (GPS) RWY 21, Orig
Topeka, KS, Forbes Field, Takeoff Minimums and Obstacle DP, Orig
Reserve, LA, St John The Baptist Parish, RNAV (GPS) RWY 35, Orig
Hyannis, MA, Barnstable Muni Boardman/Polando Field, ILS OR LOC RWY 15, Amdt 4
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, ILS OR LOC RWY 24, Amdt 18
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, RNAV (GPS) RWY 15, Orig
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, RNAV (GPS) RWY 24, Amdt 1
Lincoln, ME, Lincoln Regional, NDB RWY 17, Amdt 1
Lincoln, ME, Lincoln Regional, RNAV (GPS) RWY 17, Orig
Lincoln, ME, Lincoln Regional, RNAV (GPS) RWY 35, Orig
Lincoln, ME, Lincoln Regional, VOR/DME–A, Amdt 2
Presque Isle, ME, Northern Main Regional Arpt at Presque Is, ILS OR LOC RWY 1, Amdt 6
Presque Isle, ME, Northern Main Regional Arpt at Presque Is, RNAV (GPS) RWY 1, Amdt 1
Presque Isle, ME, Northern Main Regional Arpt at Presque Is, RNAV (GPS) RWY 19, Orig
Presque Isle, ME, Northern Main Regional Arpt at Presque Is, RNAV (GPS) RWY 28, Amdt 1
Presque Isle, ME, Northern Main Regional Arpt at Presque Is, RNAV (GPS) Y RWY 1, Orig, CANCELLED
Kirksville, MO, Kirksville Rgnl, ILS OR LOC/DME RWY 36, Amdt 1
Kirksville, MO, Kirksville Rgnl, RNAV (GPS) RWY 18, Amdt 2
Kirksville, MO, Kirksville Rgnl, RNAV (GPS) RWY 36, Amdt 2
Kirksville, MO, Kirksville Rgnl, VOR–A, Amdt 15
Kirksville, MO, Kirksville Rgnl, VOR/DME–B, Amdt 7
Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 14, Amdt 1
Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 18, Amdt 1
Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 32, Amdt 1
Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 36, Amdt 1
Gulfport, MS, Gulfport-Biloxi Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Great Falls, MT, Great Falls Intl, VOR/DME RWY 3, Amdt 17
Kalispell, MT, Glacier Park Intl, ILS OR LOC RWY 2, Amdt 6
Kalispell, MT, Glacier Park Intl, RNAV (GPS) RWY 30, Amdt 1
Kalispell, MT, Glacier Park Intl, RNAV (GPS) Z RWY 2, Amdt 2
Kalispell, MT, Glacier Park Intl, RNAV (RNP) RWY 20, Orig
Kalispell, MT, Glacier Park Intl, RNAV (RNP) Y RWY 2, Orig
Elizabethtown, NC, Curtis L Brown Jr Field, Takeoff Minimums and Obstacle DP, Orig
Roxboro, NC, Person County, ILS OR LOC RWY 6, Amdt 1
Gwinner, ND, Gwinner-Roger Melroe Field, NDB RWY 34, Amdt 2
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 16, Amdt 2
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 34, Amdt 2
Gwinner, ND, Gwinner-Roger Melroe Field, Takeoff Minimums and Obstacle DP, Orig
Columbus, NE, Columbus Muni, LOC/DME RWY 14, Amdt 8
Reno, NV, Reno/Stead, ILS OR LOC/DME RWY 32, Orig
Shirley, NY, Brookhaven, RNAV (GPS) RWY 33, Orig
Tiffin, OH, Seneca County, GPS RWY 24, Orig–A, CANCELLED
Tiffin, OH, Seneca County, RNAV (GPS) RWY 6, Orig
Tiffin, OH, Seneca County, RNAV (GPS) RWY 24, Orig
Tiffin, OH, Seneca County, Takeoff Minimums and Obstacle DP, Amdt 2
Tiffin, OH, Seneca County, VOR RWY 6, Amdt 9
Bend, OR, Bend Muni, BEND ONE Graphic Obstacle DP
Bend, OR, Bend Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Pendleton, OR, Eastern Oregon Regional at Pendleton, ILS OR LOC/DME RWY 25, Amdt 25
Pendleton, OR, Eastern Oregon Regional at Pendleton, RNAV (GPS) RWY 7, Orig
Pendleton, OR, Eastern Oregon Regional at Pendleton, RNAV (GPS) RWY 11, Orig
Pendleton, OR, Eastern Oregon Regional at Pendleton, RNAV (GPS) RWY 25, Orig
Pendleton, OR, Eastern Oregon Regional at Pendleton, RNAV (GPS) RWY 29, Orig
Pendleton, OR, Eastern Oregon Regional at Pendleton, Takeoff Minimums and Obstacle DP, Amdt 3
Pendleton, OR, Eastern Oregon Regional at Pendleton, VOR RWY 7, Amdt 15
Harrisburg, PA, Harrisburg Intl, RNAV (GPS) RWY 13, Amdt 1
Harrisburg, PA, Harrisburg Intl, RNAV (GPS) RWY 31, Amdt 1
Tower City, PA, Bendigo, Takeoff Minimums and Obstacle DP, Orig
Pawtucket, RI, North Central State, GPS RWY 5, Orig, CANCELLED
Pawtucket, RI, North Central State, LOC RWY 5, Amdt 6
Pawtucket, RI, North Central State, RNAV (GPS) RWY 5, Orig
Pawtucket, RI, North Central State, VOR–A, Amdt 7
Pawtucket, RI, North Central State, VOR–B, Amdt 7
Heber City, UT, Heber City Muni-Russ McDonald Field, RNAV (GPS)–A, Amdt 1
Leesburg, VA, Leesburg Executive, Takeoff Minimums and Obstacle DP, Amdt 1
Barre/Montpelier, VT, Edward F. Knapp State, ILS OR LOC RWY 17, Amdt 6
Barre/Montpelier, VT, Edward F. Knapp State, RNAV (GPS) RWY 17, Orig
Beckley, WV, Raleigh County Memorial, VOR RWY 10, Amdt 13
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, RNAV (GPS) Y RWY 18, Orig
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, RNAV (GPS) Z RWY 18, Orig

[FR Doc. E9–12140 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30668 Amdt. No 3223]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 28, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 28, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2.The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C.552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For theremaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs areimpracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on May 15, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAM SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
04/03/09	AK	Gustavus	Gustavus	9/2492	VOR/DME Rwy 29, Amdt 1A. Originally published in TL 09–11 is hereby rescinded.
04/30/09	AK	St George	St George	9/6473	ILS Rwy 11, Orig.
05/01/09	CA	Firebaugh	Firebaugh	9/6757	VOR/DME OR GPS–A, Amdt 2B.
05/04/09	NM	Roswell	Roswell Internation Air Center	9/6836	LOC BC Rwy 3, Amdt 9A.
05/04/09	OR	Baker City	Baker City Muni	9/6949	VOR/DME Rwy 13, AMDT 11A.
05/05/09	NC	New Bern	Craven County Regional	9/7060	Takeoff Minimums and obstacle DP, Amdt 3A.
05/05/09	NC	New Bern	Craven County Regional	9/7061	VOR Rwy 22, Amdt 2.
05/05/09	NC	New Bern	Craven County Regional	9/7062	VOR Rwy 4, Amdt 4.
05/05/09	NC	New Bern	Craven County Regional	9/7063	RNAV (GPS) Rwy 22, Orig–A.
05/05/09	NC	New Bern	Craven County Regional	9/7064	RNAV (GPS) Rwy 4, ORIG.
05/05/09	NC	New Bern	Craven County Regional	9/7065	ILS or LOC Rwy 4, Orig-B.
05/05/09	NC	New Bern	Craven County Regional	9/7066	Radar-1, Amdt 2A.
05/05/09	WI	Stevens Point	Stevens Point Muni	9/7099	ILS or LOC Rwy 21, Orig.
05/05/09	SC	Columbia	Columbia Metropolitan	9/7232	ILS Rwy 11, Amdt 14A.
05/05/09	SC	Columbia	Columbia Metropolitan	9/7233	ILS Rwy 11 (CAT III), Amdt 14A.
05/05/09	SC	Columbia	Columbia Metropolitan	9/7234	ILS or LOC Rwy 5, Amdt 1B.
05/05/09	SC	Columbia	Columbia Metropolitan	9/7235	ILS or LOC Rwy 29, Amdt 3F.
05/05/09	SC	Columbia	Columbia Metropolitan	9/7236	ILS Rwy 11 (CAT II), Amdt 14A.
05/07/09	ID	Caldwell	Caldwell Industrial	9/7644	NDB Rwy 30, AMDT 1A.
05/07/09	NY	Southampton	Southampton Heliport	9/7945	Copter RNAV (GPS) 190, Orig.
05/11/09	FL	Bartow	Bartow Muni	9/8370	RNAV (GPS) Rwy 23, Orig.
05/11/09	FL	Bartow	Bartow Muni	9/8371	RNAV (GPS) Rwy 9L, Amdt 1.
05/11/09	FL	Bartow	Bartow Muni	9/8373	RNAV (GPS) Rwy 9L, Amdt 1.
05/14/09	CA	Santa Ynez	Santa Ynez	9/8374	GPS A, Orig-B.
05/14/09	CA	Santa Ynez	Santa Ynez	9/8375	GPS Rwy 8, ORIG.
05/14/09	CA	Santa Ynez	Santa Ynez	9/8377	VOR or GPS B, AMDT 7D.
05/14/09	CA	Santa Rosa	Charles M. Schulz-Sonoma County	9/8382	VOR/DME Rwy 14, Amdt 2.
05/14/09	MA	New Bedford	New Bedford Regional	9/8422	ILS or LOC Rwy 5, Amdt 25A.

[FR Doc. E9–12138 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM07–21–002; Order No. 708–B]

Blanket Authorization Under FPA Section 203

Issued May 21, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on reporting requirements for blanket authorization under FPA Section 203.

SUMMARY: The Federal Energy Regulatory Commission (Commission) adopts reporting requirements under the expanded blanket authorization established in Order No. 708–A, which amends section 33.1(c)(12) of the Commission's regulations.

DATES: *Effective Date:* These regulations are effective July 27, 2009.

FOR FURTHER INFORMATION CONTACT:

Noah Monick (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8299.

Andrew Mosier (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6274.

Ronald Lafferty (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8026.

SUPPLEMENTARY INFORMATION:

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

Order on Reporting Requirements for Blanket Authorization Under FPA Section 203

Order No. 708–B

Issued May 21, 2009.

1. In this order, the Federal Energy Regulatory Commission (Commission) adopts reporting requirements that apply to the expanded blanket authorization under § 33.1(c)(12) of the Commission's regulations,[1] adopted in Order No. 708–A.[2]

I. Background

2. In Order No. 708, the Commission amended its regulations under section 203 of the Federal Power Act (FPA) to provide for five additional blanket authorizations under FPA section 203(a)(1).[3] The Commission found that the blanket authorizations would facilitate investment in the electric utility industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions. One of the additional blanket authorizations provided that a public utility could transfer its outstanding voting securities to any holding company granted blanket authorizations in paragraph (c)(2)(ii) of § 33.1 of the Commission's regulations, if after the transfer, the holding company and any of its associate or affiliate companies in aggregate would own less than 10 percent of the outstanding voting interests of such public utility. In adopting § 33.1(c)(12) of the Commission's regulations, the Commission rejected requests to extend the blanket authorization to ''any person,'' on the grounds that without increased reporting requirements, any such extension would best be made on a case-by-case basis.[4] The Commission also rejected requests to expand the reporting requirements applicable to the Commission's blanket authorizations under § 33.1 of the Commission's regulations.

3. In Order No. 708–A, the Commission granted, in part, and denied, in part, the requests for rehearing of Order No. 708. Among other things, the Commission expanded the blanket authorization under § 33.1(c)(12) of the Commission's regulations to authorize a public utility to transfer its outstanding voting securities to ''any person'' other than a holding company if, after the transfer, such person and any of its associate or affiliate companies will own less than 10 percent of the outstanding voting interests of such public utility. The Commission stated that it would also adopt a reporting requirement for entities transacting under that blanket authorization. In order to properly tailor the additional reporting requirement, the Commission also stated that it would issue a request for supplemental comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorizations under § 33.1(c)(12) of the Commission's regulations.

4. In its request for rehearing, the Financial Institutions Energy Group[5] (Financial Group) proposed several conditions for the reporting requirement. Financial Group proposed that within a specified time following consummation of the transaction, the following information be reported: (1) Names of all parties to the transaction; (2) identification of both the pre-transaction and post-transaction voting security holdings (and the percentage ownership) in the public utility held by the acquirer and its associates or affiliate companies; (3) the date the transaction was consummated; (4) identification of any public utility or holding company affiliates of the parties to the transaction; and (5) the same type of statement currently required under § 33.2(j)(1) of the Commission's regulations,[6] which describes Exhibit M to an FPA section 203 filing.

5. On July 17, 2008, the Commission issued an order seeking supplemental comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorization. The Commission sought comment on whether Financial Group's proposed reporting requirement should be adopted, as proposed or modified. The Commission requested that commenters who disagreed with the proposed reporting requirement should explain why and propose alternative reporting requirements. The Commission also sought comment as to whether reports should be filed with the Commission on a quarterly basis or on some other basis.

II. Comments

6. The Commission received one comment on the proposed reporting requirements, from Financial Group. Financial Group states that the Commission should adopt the reporting requirements it proposed earlier. Financial Group argues that for transactions involving non-holding companies, these requirements would give the Commission at least as much comfort (if not greater comfort) with respect to possible changes in control as the preexisting reporting requirements applicable to holding companies. The information required in the reports, Financial Group argues, will allow the Commission to determine whether there is a change in control—the purpose for monitoring these types of transactions.

7. With respect to the proposed requirement to include information regarding cross-subsidization, Financial Group states that it does not believe that this condition is necessary, but it does not object to the inclusion of this condition if the Commission deems it necessary. Financial Group notes that the transactions at issue presumptively do not convey an ability to exercise control, so there should be no concern about cross-subsidization for the Commission to consider. If the Commission does require a statement regarding cross-subsidization, Financial Group argues that this statement should not be required where neither party to the transaction has captive customers.

8. Financial Group recommends that the Commission require the reporting information on transactions covered by the blanket authorization in section 33(c)(12) of the Commission's regulations to be provided within 30 days after the end of the calendar quarter in which the transactions occurred. This timeline would allow companies who have made multiple transactions to make a combined filing that would cover each of their transactions in the prior quarter. Such a filing would be more efficient both for the filing party and for the Commission's review. Financial Group requests that the Commission affirm that the reporting requirement is not intended to be ongoing; once a transaction has been reported there are no further reporting requirements with respect to that transaction.

9. Accordingly, Financial Group suggests that a new section 33(c)(17) be added with respect to the reporting requirement for transactions under the

[1] 18 CFR 33.1(c)(12) (2008).

[2] *Blanket Authorization Under FPA Section 203*, Order No. 708, 73 FR 11003 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,265 (2008), order on reh'g, Order No. 708–A, 73 FR 43066 (July 24, 2008), FERC Stats. & Regs. ¶ 31,273 (2008).

[3] 16 U.S.C. 824b(a)(1) (2006).

[4] Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 20.

[5] Financial Group consisted at the time of its comments on September 22, 2008 of the following members: Bank of America, N.A., Barclays Bank PLC, CitiGroup Energy Inc., Credit Suisse Energy LLC (a subsidiary of Credit Suisse), Deutsche Bank AG, J. Aron & Co. (a subsidiary of The Goldman Sachs Group), JPMorgan Chase & Co., Lehman Brothers Commodity Services Inc. (a subsidiary of Lehman Brothers Holding Inc.), Merrill Lynch Commodities, Inc., Morgan Stanley Capital Group Inc., Société Générale, and UBS Energy LLC (a subsidiary of UBS AG).

[6] 18 CFR 33.2(j)(1).

blanket authorization, to state as follows:

A public utility granted blanket authorization under section 33.1(c)(12)(ii) to transfer its outstanding voting securities, and the acquirer of such voting securities, shall within 30 days after the end of the calendar quarter in which such transfer has occurred, file with the Commission a report containing the following information:

(i) The names of all parties to the transaction;

(ii) Identification of the pre- and post-transaction voting security holdings (and percentage ownership) in the public utility held by the acquirer and its associate or affiliate companies;

(iii) The date the transaction was consummated; and

(iv) Identification of any public utility or holding company affiliates of the parties to the transaction.

III. Discussion

10. As the Commission stated in Order No. 708–A, the expansion of the blanket authorization under 18 CFR 33.1(c)(12) to include ''any person'' requires additional reporting so that the Commission and the public may monitor the purchase and sale of securities under the blanket authorization. We find that the reporting requirements proposed by Financial Group provide adequate disclosure of trades made under the blanket authorization, and we adopt them here. The information required in these reports will allow the Commission to review the purchases of both holding and non-holding companies to determine whether any further action is required under Commission regulations.

11. With respect to the proposed disclosure requirement involving cross-subsidization,[7] we find that such a statement would be useful for the Commission in reviewing trades. Accordingly, we will require the disclosure report to include a statement either indicating that neither party to the transaction has any captive customers, or providing the information required in § 33.2(j)(1) of the Commission's regulations.[8]

12. Specifically, we will require that public utilities engaging in transactions under the blanket authorization under 18 CFR 33.1(c)(12) submit a report to the Commission within 30 days of the end of the calendar quarter in which the transactions occurred. At this time, we will not require continuing reporting requirements with respect to the blanket authorization for a transaction once that transaction has been reported. The following information, which will be codified under § 33.1(c)(17) of the Commission's regulations, must be included in the report:

- Names of all parties to the transaction;
- Identification of both the pre-transaction and post-transaction voting security holdings (and the percentage ownership) in the public utility held by the acquirer and its associate or affiliate companies;
- The date the transaction was consummated;
- Identification of any public utility or holding company affiliates of the parties to the transaction;
- A statement on cross-subsidization of the same type as currently required under section 33.2(j)(1) of the Commission's regulations,[9] which describes Exhibit M to an FPA section 203 filing.

13. The required reports for this fiscal year should be filed electronically under Docket HC09–8–000.

IV. Information Collection Statement

14. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (information collections) requirements imposed by agency rules.[10] Therefore, the Commission is submitting the information collection to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[11]

Burden Estimate: The public reporting burden for the reporting requirements and the records retention requirement is as follows.

Data collection FERC–519	Number of respondents	Number of responses	Hours per response	Total
Reporting	20	1	1	20
Totals	20	1	1	20

Information Collection Costs: The Commission has projected the average annualized cost of all respondents to be the following: 20 hours (reporting) @ $66 per hour = $1,320 for respondents. No capital costs are estimated to be incurred by respondents.

Title: FERC–519(b), ''Blanket Authorization Transaction Report under Section 203 FPA.''

Action: New collection.

OMB Control No: To be determined.

The applicant will not be penalized for failure to respond to this information collection unless the information collection displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information: This order codifies a limited reporting requirement for entities taking advantage of a blanket authorization under FPA section 203(a)(1), which in turn provides for a category of jurisdictional transactions under section 203(a)(1) for which the Commission would not require applications seeking before-the-fact approval. The information will enable the Commission and the public to monitor transactions that occur under the 18 CFR 33.1(c)(12) blanket authorization, as extended in Order No. 708–A.

Internal Review: The Commission has conducted an internal review of the public reporting burden associated with the collection of information and assured itself, by means of internal review, that there is specific, objective support for its information burden estimate.

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

V. Environmental Analysis

16. Commission regulations require that an environmental assessment or an environmental impact statement be

[7] Financial Group proposed that parties include in their disclosure the same type of statement currently required under section 33.2(j)(1), which describes Exhibit M to an FPA section 203 filing.

[8] 18 CFR 33.2(j)(1).

[9] 18 CFR 33.2(j)(1).

[10] 5 CFR 1320.12.

[11] 44 U.S.C. 3507(d).

prepared for any Commission action that may have a significant adverse effect on the human environment.[12] No environmental consideration is necessary for Commission action that involves information gathering, analysis, and dissemination.[13] Consequently, neither an environmental impact statement nor an environmental assessment is required.

VI. Regulatory Flexibility Act

17. The Regulatory Flexibility Act of 1980 (RFA)[14] generally requires either a description and analysis of a rule that will have a significant economic impact on a substantial number of small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. Most utilities to which this reporting requirement applies would not fall within the RFA's definition of small entity.[15] Consequently, the Commission certifies that this reporting requirement will not have a significant economic impact on a substantial number of small entities.

VII. Document Availability

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

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

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

VIII. Effective Date and Congressional Notification

21. These regulations are effective July 27, 2009. The Commission has determined, with the concurrence of the administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit this rule to both houses of Congress and the Government Accountability Office.

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends part 33, Chapter I, Title 18 of the *Code of Federal Regulations*, as follows:

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

■ 1. The authority citation for part 33 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; Pub. L. 209–58, 119 Stat. 594.

■ 2. In § 33.1, paragraph (c)(12) is revised and paragraph (c)(17) is added to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

* * * * *

(c) * * *

(12) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to:

(i) Any holding company granted blanket authorizations in paragraph (c)(2)(ii) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility; or

(ii) Any person other than a holding company if, after the transfer, such person and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility, and within 30 days after the end of the calendar quarter in which such transfer has occurred the public utility notifies the Commission in accordance with paragraph (c)(17) of this section.

* * * * *

(17) A public utility granted blanket authorization under paragraph (c)(12)(ii) of this section to transfer its outstanding voting securities shall, within 30 days after the end of the calendar quarter in which such transfer has occurred, file with the Commission a report containing the following information:

(i) The names of all parties to the transaction;

(ii) Identification of the pre- and post-transaction voting security holdings (and percentage ownership) in the public utility held by the acquirer and its associate or affilate companies;

(iii) The date the transaction was consummated;

(iv) Identification of any public utility or holding company affiliates of the parties to the transaction; and

(v) A statement indicating that the proposed transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company as required in § 33.2(j)(1).

[FR Doc. E9–12381 Filed 5–27–09; 8:45 am]

BILLING CODE 6717–01–P

[12] *Regulations Implementing National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[13] 18 CFR 380.4(a)(5).

[14] 5 U.S.C. 601–12.

[15] 5 U.S.C. 601(3), *citing* to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–16–000; Order No. 724]

Electric Reliability Organization Interpretations of Specific Requirements of Frequency Response and Bias and Voltage and Reactive Control Reliability Standards

Issued May 21, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission hereby approves the North American Electric Reliability Corporation's (NERC) interpretation of one Commission-

approved Reliability Standard, BAL–003–0, Frequency Response and Bias; and remands NERC's proposed interpretation of VAR–001–1, Voltage and Reactive Control, for reconsideration consistent with this Final Rule.

DATES: *Effective Date:* The Final Rule will become effective June 29, 2009.

FOR FURTHER INFORMATION CONTACT: Patrick Harwood (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–6125, *Patrick.harwood@ferc.gov*.

Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8744.

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

Final Rule

Issued May 21, 2009

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission hereby approves the interpretation proposed by the North American Electric Reliability Corporation (NERC) of Commission-approved Reliability Standard BAL–003–0, Frequency Response and Bias, but remands NERC's proposed interpretation of Reliability Standard VAR–001–1, Voltage and Reactive Control, for additional clarification.[1]

I. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[2]

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

4. NERC's Rules of Procedure provide that a person that is ''directly and materially affected'' by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[7] In response to a request, the ERO's standards process manager assembles a team with relevant expertise to address the requested interpretation and forms a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authority for approval.[8]

B. NERC Filing

5. On July 28, 2008, NERC submitted a Petition for Approval of Formal Interpretations to Reliability Standards (Petition), seeking Commission approval of interpretations of BAL–003–0, Requirements R2 and R5; and VAR–001–1, Requirement R4.

6. For BAL–003–0, the Electric Reliability Council of Texas (ERCOT) requested clarification that the provision in BAL–003–0, Requirement R2, permitting use of a variable bias setting, did not conflict with BAL–003–0, Requirement R5, which states that the frequency bias setting for Balancing Authorities serving native load should be at least one percent of yearly peak demand. For VAR–001–1, Dynegy, Inc. (Dynegy) requested clarification whether there are implicit requirements that the voltage schedule and associated tolerance band to be provided by the transmission operator under Requirement R4 be technically based, reasonable and practical for a generator to maintain.

7. Consistent with the NERC Rules of Procedure, a NERC-assembled ballot body, consisting of industry stakeholders, developed the interpretations using the NERC Reliability Standards Development Procedure,[9] and the NERC Board of Trustees approved the interpretations.[10] The interpretations do not modify the language contained in the requirements under review. NERC requested the Commission to approve the interpretations, effective immediately after approval, consistent with the Commission's procedures.

C. NOPR

8. In Response, the Commission issued a Notice of Proposed Rulemaking and proposed to approve the ERO's formal interpretation of Requirements R2 and R5 of BAL–003–0 but remand the proposed interpretation of VAR–001–1, and requested comment on its proposals.[11]

II. Discussion

A. Procedural Matters

9. NERC, Ameren Services Co. (Ameren), Edison Electric Institute (EEI), FirstEnergy Service Co. (FirstEnergy) and The Independent Electricity System Operator of Ontario (IESO)[12] filed comments, largely addressing the Commission's proposal to remand the proposed interpretation of VAR–001–1.

B. BAL–003–0

1. NOPR Proposal

10. BAL–003–0, Requirement 2 states that a ''Balancing Authority shall establish and maintain a Frequency Bias Setting that is as close as practical to, or greater than, the Balancing Authority's Frequency Response.'' BAL–003–0,

[1] 16 U.S.C. 8240 (2006). The Commission is not adding any new or modified text to its regulations.

[2] *See* 16 U.S.C. 824o(e)(3).

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

[4] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *appeal docketed sub nom. Alcoa, Inc.* v. *FERC*, Case No. 06–1426 (DC Cir. Dec. 29, 2006).

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

[6] 16 U.S.C. 824o(d)(5). Section 215(d)(5) provides: ''The Commission* * * may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.''

[7] NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 26–27 (2007).

[8] The NERC board of trustees approves Reliability Standard interpretations once they are posted and presented for adoption. *Id.* at 23–24, 26–27.

[9] *See* NERC's Rules of Procedures, Appendix 3A.

[10] NERC Petition at 3.

[11] *Electric Reliability Organization Interpretations of Specific Requirements of Frequency Response and Bias and Voltage and Reactive Control Reliability Standards*, Notice of Proposed Rulemaking, 73 FR 71971 (Nov. 26, 2008), FERC Stats. & Regs. ¶ 32,639 (2008) (NOPR).

[12] The IESO administers wholesale electricity markets and operates the integrated power system in Ontario, Canada and is subject to oversight by the Ontario Energy Board.

Requirement 5 states that ''Balancing Authorities that serve native load [such as ERCOT] shall have a monthly average Frequency Bias Setting that is at least one percent of the Balancing Authority's estimated yearly peak demand per 0.1 Hz change.'' ERCOT requested clarification whether there is a conflict between BAL–003–0, Requirement R2, and BAL–003–0, Requirement R5. In response, NERC proposed the following interpretation:

Frequency Response and Bias Requirement 2 requires a Balancing Authority to analyze its response to frequency excursions as a first step in determining its frequency bias setting. The Balancing Authority may then choose a fixed bias (constant through the year) per Requirement 2.1, or a variable bias (varies with load, specific generators, etc.) per Requirement 2.2.

Frequency Response and Bias Requirement 5 sets a minimum contribution for all Balancing Authorities toward stabilizing interconnection frequency. The 1% bias setting establishes a minimum level of automatic generation control action to help stabilize frequency following a disturbance. By setting a floor on bias, Requirement 5 also helps ensure a consistent measure of control performance among all Balancing Authorities within a multi-Balancing Authority interconnection. However, ERCOT is a single Balancing Authority interconnection. The bias settings ERCOT uses do produce, on average, the best level of automatic generation control action to meet control performance metrics. The bias value in a single Balancing Authority interconnection does not impact the measure of control performance.

11. In the NOPR, the Commission proposed to find NERC's interpretation of BAL–003–0, Requirements R2 and R5 to be reasonable in providing consistency in frequency bias setting determinations, used in area control error (ACE) calculations.[13] The Commission viewed the interpretation as consistent with an earlier, Order No. 693 finding that the requirements of BAL–003–0 do not conflict with one another.[14] In Order No. 693, the Commission found that Requirement R2 provides the relationship between frequency response and frequency bias, with frequency bias to be as close as practical to, or greater than, the balancing authority's frequency response. Requirements R5 and R5.1 require balancing authorities to establish frequency bias settings based on one percent of peak demand or maximum generation level, based on individual circumstances.[15]

12. The Commission proposed to approve the interpretation, since the BAL–003–0, Requirement R5 minimum bias setting establishes a consistent methodology for an ACE determination input, and ensures that an adequate level of generation is set aside to provide frequency response.[16] The Commission declined to address the issue whether the ERCOT methodology, reported to result in ''the best level of automatic generation control action to meet control performance metrics,'' may be a preferable methodology, noting that such an issue is better resolved through a proceeding to review a proposal to permit ERCOT to depart from the requirement. The Commission noted that while ERCOT is a single-balancing-authority Interconnection and, therefore, does not need to allocate automatic generation control responsibility among multiple balancing authorities within the Interconnection, the other justifications for Requirement R5, supporting a consistent ACE calculation methodology and providing a minimum standard for reliability, remain valid justifications for the minimum setting.[17]

2. Comments

13. No participant filed comments opposing the BAL–003–0 interpretation.

3. Commission Determination

14. The ERO's interpretation clarifies that the BAL–003–0 Requirements R2 and R5 do not conflict with one another. In Order No. 693, the Commission made clear that a frequency bias setting based only on the value set forth in Requirement R5 is insufficient and that a balancing authority must also follow Requirement R2.[18] ERCOT presents the reverse question, whether a balancing authority that follows the variable bias setting under Requirement R2 must also follow Requirement R5. In response, NERC's interpretation affirms that a balancing authority that uses the variable bias option provided under Requirement R2 must also follow Requirement R5. In addition, no comments were filed opposing the Commission's proposal to approve NERC's BAL–003–0 interpretation.

15. Accordingly, we approve NERC's BAL–003–0 interpretation. The Commission finds that the ERO's interpretation is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

C. VAR–001–1

1. NOPR Proposal

16. VAR–001–1, Requirement R4 directs each transmission operator to provide each generator with a voltage and reactive power output schedule, within a tolerance band. A second Reliability Standard, VAR–002–1, Requirement R2, requires that each generator must meet the schedule (typically via automatic control) or provide an explanation why it cannot do so. The Requirements state:

VAR–001–1—Voltage and Reactive Control.

Requirement R4. Each Transmission Operator shall specify a voltage or Reactive Power schedule [19] at the interconnection between the generator facility and the Transmission Owner's facilities to be maintained by each generator. The Transmission Operator shall provide the voltage or Reactive Power schedule to the associated Generator Operator and direct the Generator Operator to comply with the schedule in automatic voltage control mode (AVR [automatic voltage regulation] in service and controlling voltage). * * *

VAR–002–1—Generator Operation for Maintaining Network Voltage Schedules.

Requirement R2. Unless exempted by the Transmission Operator, each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable Facility Ratings) [20] as directed by the Transmission Operator.

R2.1. When a generator's automatic voltage regulator is out of service, the Generator Operator shall use an alternative method to control the generator voltage and reactive output to meet the voltage or Reactive Power schedule directed by the Transmission Operator.

R2.2. When directed to modify voltage, the Generator Operator shall comply or provide an explanation of why the schedule cannot be met.

17. Dynegy requested clarification whether there are implicit requirements that the voltage schedule and associated tolerance band to be provided by the transmission operator under VAR–001–1, Requirement R4 be technically based,

[13] A frequency bias setting is a value expressed in MW per 0.1 Hz, set into a balancing authority's ACE algorithm, which allows the balancing authority to contribute its frequency response to the Interconnection. NERC's glossary, which provides definitions of the relevant terms, defines ACE as ''The instantaneous difference between a balancing authority's net actual and scheduled interchange, taking into account the effects of frequency bias and correction for meter error.''

[14] NOPR, FERC Stats. & Regs. ¶ 32,639 at P 17; Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 370 (addressing the suggestion that Requirement R5 should be required in lieu of Requirement R2 for certain balancing authorities and finding that Requirements R2 and R5 do not conflict); BAL–003–0, Requirement R5.

[15] *See id.* P 362, 370.

[16] NOPR, FERC Stats. & Regs. ¶ 32,639 at P 16, 18.

[17] *Id.* P 18 n.19.

[18] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 370 (emphasizing the need to follow both Requirements R2 and R5).

[19] The voltage schedule is a target voltage to be maintained within a tolerance band during a specified period. [Footnote in original.]

[20] When a Generator is operating in manual control, reactive power capability may change based on stability considerations and this will lead to a change in the associate Facility Ratings. [Footnote in original.]

reasonable and practical for a generator to maintain. In response, NERC proposed the following interpretation:

NERC Reliability Standard VAR–001–1 is only comprised of stated requirements and associated compliance elements. The requirements have been developed in a fair and open process, balloted and accepted by FERC for compliance review. Any ''implicit'' requirement would be based on subjective interpretation and viewpoint and therefore cannot be objectively measured and enforced. Any attempt at ''interpreting an implicit requirement'' would effectively be adding a new requirement to the standard.

This can only be done through the [Standards Authorization Request] process.

Since there are no requirements in VAR–001–1 to issue a ''technically based, reasonable and practical to maintain voltage or reactive power schedule and associated tolerance band,'' there are no measures or associated compliance elements in the standard.

The standard only requires that ''Each Transmission Operator shall specify a voltage or Reactive Power schedule. * * *'' and that ''The Transmission Operator shall provide the voltage or Reactive Power schedule to the associated Generator Operator and direct the Generator Operator to comply with the schedule. * * *'' Also, Measure 1 and the associated compliance elements follow accordingly by stating that ''The Transmission Operator shall have evidence it provided a voltage or Reactive Power schedule * * *''

* * * * *

Requirement 2 and Requirement 2.2 of VAR–002–1 relate somewhat to questions #2 and 3. R2 states that ''Unless exempted by the Transmission Operator, each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable Facility Ratings) as directed by the Transmission Operator.'' R2.2 goes on to state ''When directed to modify voltage, the Generator Operator shall comply or provide an explanation of why the schedule cannot be met.'' [footnotes omitted.]

18. NERC provided additional information in its transmittal letter accompanying the interpretation, noting that VAR–001–1, Requirement R2 states, ''Each Transmission Operator shall acquire sufficient reactive resources within its area to protect the voltage levels under normal and Contingency conditions.'' NERC explained that, in order to fulfill Requirement R2, the transmission operator must perform a valid analysis of the system, using models that accurately represent equipment capabilities. Therefore, while NERC supported its interpretation of Requirement R4, including the finding that a requirement cannot establish implicit obligations, it stated that the issue that Dynegy raised for clarification is better resolved through an examination of Requirement R2.[21]

19. In response, the Commission proposed to remand NERC's interpretation of VAR–001–1, Requirement R4, because the interpretation suggested that there is no requirement that a voltage schedule have a sound technical basis. The Commission noted that Order No. 693 stated that all Reliability Standards must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal.[22] The Commission thus disagreed with NERC's proposed interpretation because it suggested that a transmission operator could deliver a voltage schedule that lacked any technical basis. The Commission, citing the NERC Rules of Procedure, section 302.5, concluded that a voltage schedule should reflect technical analysis, *i.e.*, sound engineering, as well as operating judgment and experience.[23]

20. The NOPR also highlighted the Commission's review in Order No. 693 of each Reliability Standard and approval of those containing Requirements that are sufficiently clear as to be enforceable and that do not create due process concerns.[24] The Commission noted that its approval in Order No. 693 of VAR–001–1 meant that VAR–001–1 is sufficiently clear to inform transmission operators what is required of them.[25] The Commission acknowledged that it has elsewhere declined to specify in detail how a registered entity should implement a Reliability Standard, but countered that such actions do not mean that an entity seeking to comply with a Reliability Standard may act in a manner that is not technically sound, *i.e.*, in a manner that is not grounded in sound engineering, and thus, not reasonable and practical.[26] The Commission objected to NERC's proposed interpretation as implying that the voltage schedules provided under VAR–001–1, Requirement R4 need not have any technical basis, and thus need not be reasonable and practical.

21. The Commission proposed in the NOPR to remand NERC's proposed interpretation of VAR–001–1, Requirement R4 for reconsideration consistent with this rulemaking. In addition, the Commission rejected an additional proposal from Dynegy, asserting that NERC needs to develop evaluation measures to review the technical basis for voltage schedules, as beyond the scope of the interpretation process. The Commission proposed that such an effort would be better discussed pursuant to a Standards Authorization Request under the NERC Reliability Standards Development Procedures.

2. Comments

a. VAR–001–1, Requirement R4 Technical Basis

22. No participant contests the Commission's determination that all Reliability Standards must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal.[27] The parties, as discussed below, also largely agree or acknowledge that voltage schedules must have a technical basis.[28]

[21] NERC Petition at 14.

[22] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 5 (''[A] Reliability Standard must provide for the Reliable Operation of Bulk-Power System facilities and may impose a requirement on any user, owner or operator of such facilities. It must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal. The Reliability Standard should be clear and unambiguous regarding what is required and who is required to comply. The possible consequences for violating a Reliability Standard should be clear and understandable to those who must comply. There should be clear criteria for whether an entity is in compliance with a Reliability Standard. While a Reliability Standard does not necessarily need to reflect the optimal method for achieving its reliability goal, a Reliability Standard should achieve its reliability goal effectively and efficiently.''); *see also* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 324.

[23] NOPR, FERC Stats. & Regs. ¶ 32,639 at P 30 (citing Order No. 693 at P 5).

[24] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 274. In reviewing specific Reliability Standards, the Commission identified for certain Reliability Standards implicit obligations that should be incorporated into those Reliability Standards and directed NERC to revise the standards to explicitly incorporate the obligations; *see Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, at P 75 (2008) (directing the ERO to modify the CIP Reliability Standards to incorporate an obligation to implement plans, policies and procedures); Order No. 693 at P 1787 (''In the NOPR, the Commission identified an implicit assumption in the TPL Reliability Standards that all generators are required to ride through the same types of voltage disturbances and remain in service after the fault is cleared. This implicit assumption should be made explicit.''); *Facilities Design, Connections and Maintenance Reliability Standards*, Order No. 705, 121 FERC ¶ 61,296, at P 54 (2007) (''although the TPL Reliability Standards implicitly require the loss of a shunt device to be addressed, they do not do so explicitly'').

[25] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 275.

[26] As noted above, Reliability Standards should reflect sound engineering principles. *See id.* P 5; Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 324; *accord* NERC Rules of Procedure, section 302.5.

[27] *See, e.g.*, IESO comments at 5 (''The IESO agrees with the Commission that standards should be technically sound'').

[28] *See* NERC comments at 5 (each requirement contributes to meeting a Reliability Standard objective; other Reliability Standards require the technical basis to be established for voltage schedules); Ameren comments at 5 (users, owners and operators must act in a technically sound manner in compliance with VAR–001–1, Requirement R4); EEI comments at 2 (however, EEI states that a transmission operator cannot be audited on the ''subjective interpretation'' that a voltage schedule be technically sound, because there are no associated compliance measures);

23. FirstEnergy supports the Commission's proposal to remand NERC's interpretation for further consideration because NERC's proposed interpretation suggests that voltage schedules could lack a technical basis. However, FirstEnergy interprets the Commission's proposal in the NOPR as finding that there are ''implicit'' obligations in VAR–001–1, Requirement R4 that instead should be explicitly incorporated in the Reliability Standards. Therefore, FirstEnergy supports a remand, but states that the remand should incorporate a directive to consider evaluation measures and review the technical basis for voltage schedules pursuant to a Standards Authorization Request under the NERC Reliability Standards development process.[29]

24. According to FirstEnergy, Requirement R4 is correctly written to avoid overly prescriptive language as to what constitutes the correct technical basis, since the determination of voltage schedules is unique to individual transmission systems.[30]

25. Despite acknowledging that the voltage schedules must have a technical basis, some participants object to the Commission's proposal to remand the interpretation in order that NERC may reflect that fact in the interpretation, solely because the requirement is not explicit, that is, not stated directly in the Reliability Standard and supported by compliance measures.[31] EEI supports remand for the limited purpose to incorporate supporting material from NERC's pleadings and a reference to the Order No. 693 discussion that prompted the Commission's concern.[32] However, EEI states that this material would not reflect an auditable requirement that voltage schedules be technically sound, due to the lack of measures and compliance elements.[33] According to EEI, the issue raised in Dynegy's interpretation request was resolved in Order No. 693 when the Commission addressed requests that the Commission direct NERC to modify VAR–001–1 to include detailed and definitive requirements on established limits and sufficient reactive resources and identify acceptable voltage margins.[34] Therefore, EEI views Dynegy's request as an attempt to circumvent the Reliability Standard development process.

26. Ameren characterizes the Commission's proposed remand as effectively creating a new requirement outside the approved procedures, and suggests that the appropriate procedure is to initiate a Standards Authorization Request. Ameren cites the Commission's rejecting Dynegy's proposed evaluation measures as supporting its position.[35] Ameren characterizes the Commission's proposal as resulting in an interpretation that would implement a requirement that is not understood to be part of the Reliability Standard, and cites the NERC balloting as evidence that the industry does not agree with the position that there is an implicit requirement.[36]

b. Technical Basis in Other Reliability Standard Requirements

27. Several participants claim that, while the scope of VAR–001–1, Requirement R4 is limited, other requirements create obligations which lead to technically sound voltage schedules or compliance with VAR–001–1. According to NERC, each of the requirements in VAR–001–1 contributes to meeting the stated objective of the Reliability Standard, and it is the combination of requirements that provides a technically sound method to achieve the purpose of VAR–001–1. NERC states that, although Requirement R4 does not explicitly require a voltage schedule that is technically based, reasonable and practical, ''other requirements in VAR–001–1 do require the technical basis to be established.''[37] NERC concludes that ''as a whole'' VAR–001–1 is technically sound.

28. NERC cites Requirements R2 and R8 through R12 as requiring a transmission operator to have a defensible technical basis to achieve the purpose of VAR–001–1.[38] NERC states that these requirements direct a transmission operator to understand system dynamics to maintain voltage sufficiency and stability under normal and contingency conditions. According to NERC, to maintain the system within limits in real-time and to avoid voltage collapse in the operating time horizon, a transmission operator must study the system on a first contingency basis and must ''position the voltage and reactive profile of the system appropriately, including the voltage [schedules] provided to generator operators.''[39] NERC continues, indicating that a transmission operator possesses valuable insight into reactive ''weak spots'' where additional reactive support would be beneficial to help it achieve the performance expectations outlined in VAR–001–1.[40]

29. NERC also summarizes various planning actions that a transmission operator must take with respect to voltage support. NERC states that, to meet the planning obligations embodied in VAR–001–1, Requirements R2, R9.1 and R11, a transmission operator must rely on long-range and seasonal studies provided by the transmission planner. According to NERC, a combination of planning and operations analysis and feedback provides the technical foundation for voltage schedules to be maintained at buses across the transmission system, including generator buses. NERC concludes that ''there must be a technical basis for'' the voltage schedule provided for in Requirement R4.[41]

30. To remedy the perceived disconnect, NERC suggests that the interpretation could be improved by stating that it is VAR–001–1, Requirement R4 that lacks an explicit requirement for a technically-based, reasonable, and practical voltage schedule, and ''not the entire VAR–001–1 standard.''[42]

31. EEI also indicates that, even though not part of the interpretation, the additional information in NERC's filing demonstrates that the requirements in VAR–001 are based on sound engineering principles, but because it is

FirstEnergy comments at 6 (noting that VAR–001–1 avoids overly prescriptive language defining the correct technical basis). IESO argues that other Reliability Standards require sound engineering principals and technical expertise, in order to meet reliability objectives and obligations, and that these Reliability Standards ''supplement'' the VAR–001–1 Reliability Standard. IESO comments at 5–6.

[29] FirstEnergy comments at 5. *See also* Ameren comments at 9 (comparing current proposal to directives in Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1880, to address clarifying changes through the Reliability Standards development process); IESO comments at 5 (perceived deficiencies in the Reliability Standard should be addressed in the Reliability Standards development process).

[30] FirstEnergy comments at 6.

[31] *See* NERC comments at 5, 9; Ameren comments at 6–9; IESO comments at 1–2, 3.

[32] EEI comments at 3–4.

[33] *Id.* at 2.

[34] *Id.* at 3 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1868).

[35] Ameren comments at 10 (citing NOPR, FERC Stats. & Regs. ¶ 32,639 at P 32).

[36] *Id.* at 7, 10.

[37] NERC comments at 5–6.

[38] *Id.* at 6–7. NERC lists Requirement R2 (discussing reactive sufficiency), Requirement R8 (requiring a transmission operator to operate reactive resources to maintain system voltage limits), Requirement R9 (requiring transmission operators to address reactive support under first contingency conditions), Requirement R10 (addressing system operating limit (SOL) and interconnection reliability operating limit (IROL) violations), Requirement R11 (providing for transformer tap settings) and Requirement R12 (directing a transmission operator to take preemptive action to prevent voltage collapse).

[39] *Id.* at 7.

[40] *Id.* at 7–8.

[41] *Id.* at 9–10.

[42] *Id.* at 9.

not in NERC's official interpretation, a remand may be warranted.[43]

32. Ameren states that review of VAR–002–1a can answer Dynegy's concerns regarding the ''reasonable and practical'' generator voltage schedule. According to Ameren, the interpretation would not permit unsound practices or practices that threaten system reliability, but instead points to VAR–002–1, Requirement R2 as establishing procedures that accommodate ''actual generator capabilities'' and ''the transmission operator's need to maintain voltage schedules.''[44] Ameren states that the interpretation addresses concerns whether a voltage schedule must accommodate ''reasonable'' and ''practical'' generator capabilities by reference to VAR–002–1a, the Reliability Standard that addresses the generators' obligations.[45]

33. Ameren states that Reliability Standards VAR–001 and VAR–002, taken together, support a technically sound purpose of providing for safe and reliable Reactive Power and voltage control, as required by Order No. 693. Ameren asserts that these Reliability Standards as written and interpreted are sufficient to protect electric reliability.[46]

34. According to FirstEnergy, both transmission operators and generator operators are responsible to confirm the technical basis for a voltage schedule. FirstEnergy continues, explaining that the stated purpose of VAR–001–1 provides the basis for Requirement R4, which requires a transmission operator to provide a technically sound voltage schedule that provides sufficient reactive support and respects bulk electric system facility ratings. Failure to do so, FirstEnergy submits, could adversely affect generator equipment and bulk electric system reliability. FirstEnergy states that VAR–002–1 requires generators to provide reactive support to meet this obligation; FirstEnergy suggests that a generator that cannot fulfill that purpose based on the voltage schedule received must coordinate an acceptable voltage schedule with the transmission operator in order to meet the explicit requirements of VAR–002–1.

35. FirstEnergy agrees with the Commission's proposal rejecting Dynegy's request for more detailed specification of the technical requirements of the VAR–001–1 Reliability Standard, as beyond the scope of an interpretation proceeding. FirstEnergy claims that Dynegy's suggestions are already being considered in Project 2008–01, pursuant to NERC's 2009–11.[47] Finally, FirstEnergy suggests that the addition of reliability coordinators as applicable entities would aid in mediating disputes between transmission operators and generator operators.

36. According to IESO, numerous Reliability Standards supplement VAR–001–1 and ensure that transmission operators develop plans and procedures that provide for reliability.[48] IESO states that transmission operators would not be able to provide for system reliability, prevent system operating limit or interconnection reliability operating limit violations, or prevent cascading outages if they do not employ sound engineering principles and technical expertise during the development of plans and procedures.

37. IESO lists several Reliability Standards as supplementing VAR–001–1, including TOP–002–2, Requirement R2 (requiring operations plans); TOP–004–2, Requirement R6 (requiring transmission operators to develop policies for transmission reliability, including controlling voltage levels); TOP–008–1, Requirement R2 (requiring transmission operator to limit potential for IROL or SOL violations). In addition, IESO objects to the Commission's view that NERC's interpretation fails to recognize that a voltage schedule issued under VAR–001–1 should reflect technical analysis, including sound engineering and operating judgment and experience, by noting that planners are required to include system operating personnel in the planning process under TOP–002–2, Requirement R2.[49]

c. Enforceability

38. EEI agrees with NERC that VAR–001–1 lacks an explicit requirement to issue a technically based, reasonable and practical voltage and reactive schedule and also lacks measures or associate compliance elements in the standard. Therefore, EEI concludes that a transmission operator cannot be audited on what EEI terms the ''subjective interpretation'' that a voltage schedule must have a sound technical basis.[50]

39. According to Ameren, NERC's proposal correctly recognizes that a Reliability Standard cannot establish obligations implicitly, but instead must have stated obligations that can be objectively measured. Ameren states that nothing in VAR–001–1 specifies a technical basis for the transmission operator's voltage schedule and tolerance band or requires a transmission operator to issue its supporting methodology, as Dynegy proposed.[51] IESO agrees with NERC that an implied requirement is not a stated requirement that can be objectively measured.

40. Ameren states that, since there are no implicit requirements, there are no measurements of compliance. According to Ameren, the Reliability Standard and interpretations drafting teams explained that any implicit requirement is subjective, and could not be objectively measured and enforced.[52]

41. Ameren cites the Order No. 672 factors for approving a Reliability Standard as mandatory and enforceable under the FPA.[53] According to Ameren, an implied requirement, not contained

[43] EEI comments at 2.

[44] Ameren comments at 6 (citing NERC Petition, Exhibit B–1 at 2; NOPR, FERC Stats. & Regs. ¶ 32,639 at P 31 (proposing remand and rejecting Dynegy request for the development of compliance measures as beyond the scope of an interpretation proceeding)).

[45] *Id.* at 6 (citing NERC Petition, Transmittal Letter at 12–13 and VAR–001–1a as providing that ''each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable Facility Ratings[]) as directed by the Transmission Operator'' and Requirement R2.2 as providing that ''the Generator Operator shall comply or provide an explanation of why the schedule cannot be met'').

[46] *Id.* at 7 (citing Order No. 693, FERC Stats. & Regs. ¶31,242 at P 5, as explaining that ''a Reliability Standard does not necessarily need to reflect the optimal method for achieving its reliability goal, [but] a Reliability Standard should achieve its reliability goal effectively and efficiently,'' and should be ''sufficient to adequately protect Bulk-Power System reliability'').

[47] FirstEnergy comments at 8.

[48] IESO comments at 5.

[49] *Id.* at 6 (citing NOPR, FERC Stats. & Regs. ¶ 32,639 at P 30).

[50] EEI comments at 2.

[51] Ameren comments at 5–6 (citing NERC Petition, Exhibit B–1 and Dynegy Oct. 11, 2007 request for interpretation as stating: ''Requirement 4 does not impose any explicit obligations on the Transmission Operator other than to provide the Generator Operator with a voltage or reactive power output schedule and an associated tolerance band.'').

[52] Ameren comments at 8 (citing NERC Petition at 11; NERC proposed VAR–001–1 interpretation at 1).

[53] *Id.* at 7 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 324, 327:

The proposed Reliability Standard must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal. Although any person may propose a topic for a Reliability Standard to the ERO, in the ERO's process, the specific proposed Reliability Standard should be developed initially by persons within the electric power industry and community with a high level of technical expertise and be based on sound technical and engineering criteria. It should be based on actual data and lessons learned from past operating incidents, where appropriate. The process for ERO approval of a proposed Reliability Standard should be fair and open to all interested persons. * * *

There should be a clear criterion or measure of whether an entity is in compliance with a proposed Reliability Standard. It should contain or be accompanied by an objective measure of compliance so that it can be enforced and so that enforcement can be applied in a consistent and non-preferential manner.

in the language of the Reliability Standard itself, is ambiguous both as to what is required and what measurements will be used to determine compliance. Ameren concludes that such a requirement cannot be enforced fairly, and should not be made part of a mandatory Reliability Standard.

42. Ameren states that disagreements may arise between transmission operators, NERC, generator operators and auditors over reasonableness of a technical basis or methodology or the practicality of a schedule.[54] Ameren criticizes the proposed remand because it contains no instructions for how transmission operators could implement an implicit requirement.[55] Ameren concludes that an implicit requirement is unacceptable and simply unworkable in the context of mandatory and enforceable electric Reliability Standards.

d. Miscellaneous

43. Some participants are concerned that this interpretation could circumvent NERC's Standard development process or otherwise lacks due process.[56] Ameren agrees with the Commission's acknowledgement in the NOPR upholding NERC's rejection of Dynegy's proposed evaluation measures. Ameren states that NERC's interpretation should be approved based on the results of the NERC ballot process. EEI states that the Commission provided an appropriate response in Order No. 693 by directing NERC to develop specific requirements for the issues addressed in the Final Rule through the NERC Reliability Standards development process, and questions whether Dynegy's request concerning voltage schedules is an attempt to circumvent the Reliability Standards development process.[57] These participants claim that interpretations that put new measures in place or would implement new requirements are beyond the scope of the interpretation process.

44. Finally, participants reason that the Commission must rely on the judgment of the ERO in areas involving technical expertise relating to the content of the Reliability Standard and that, if Dynegy wishes to seek new material or measures to be added to the Reliability Standards, it must be handled through a Standards Authorization Request under the NERC Reliability Standards development process.[58] Ameren states that the technical content of the interpretation is entitled to deference. Ameren claims that a remand of VAR–00l–l, Requirement R4 would add a new requirement to the Reliability Standard where the technical experts have acknowledged that one does not exist, without going through the required standards authorization process.[59] Ameren states that such a revision would violate due process and demonstrate a lack of deference to the Reliability Standards development process.

45. On a similar note, FirstEnergy and EEI both suggest that this interpretation request would add requirements to the VAR–001–1 Reliability Standard that are not otherwise required, and the proposed clarification would be more appropriately considered in the ongoing standards development proceedings. FirstEnergy states that changes to Reliability Standards to add more detail, such as the specific technical details sought by Dynegy, should be addressed in the ongoing Reliability Standards development process.

46. EEI points out that Dynegy's request raises several process issues. EEI claims that NERC's narrow interpretation, that there are no implicit requirements with regard to the Reliability Standard's technical validity, could suggest that the Reliability Standard itself is useless. On the other hand, EEI claims that if NERC indicated that there was an implicit requirement, such a requirement must be made explicit in this and every other Reliability Standard, potentially necessitating an overhaul of the entire collection of Reliability Standards.[60] EEI also warns that the Commission and NERC should be careful not to allow a single entity to change a Reliability Standard via interpretations and that any such ''backdoor'' device should be avoided.

3. Commission Determination

47. The Commission remands to the ERO the proposed interpretation of VAR–001–1, Requirement R4 and directs the ERO to revise the interpretation consistent with the Commission's discussion below.

a. Voltage Schedules Provided Under VAR–001–1, Requirement R4 Must Have a Sound Technical Basis

48. Order No. 693 held that all Reliability Standards must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve the goal.[61] No participant disagrees with this assessment.[62] Furthermore, no participant challenges the Commission's objection that the Reliability Standards should not permit delivery of a voltage schedule that lacks any technical basis.[63] Instead, the participants suggest various ways in which other Reliability Standards requirements provide that technical basis or at least do not permit transmission operators to engage in unsound practices with respect to voltage schedules.[64]

49. VAR–001–1, Requirement R4 requires each transmission operator to specify a voltage schedule to be maintained by each generator and explains that the voltage schedule is a target voltage to be maintained within a tolerance band during a specified period. Requirement R4 is part of the means by which a transmission operator achieves the goal of VAR–001–1, ''to ensure that voltage levels, reactive flows, and reactive resources are monitored, controlled, and maintained within limits in real time to protect equipment and the reliable operation of the Interconnection.'' Because Requirement R4 requires transmission owners to specify target voltages at each generator's interconnection with the system, while taking into account specific periods of use and facility tolerance bands, the Requirement is not merely a ministerial requirement, but, rather, presupposes the exercise of engineering judgment. These determinations are technical in nature, and, since they represent one of the means by which the VAR–001–1 Reliability Standard achieves its goal, they must be technically sound, that is, based on sound engineering. Actions

[54] Ameren comments at 8.

[55] *Id.* at 9.

[56] *Ameren* comments at 10 (suggesting that remand may circumvent the Reliability Standards development procedure by adding new requirements to the standard violating the principles of due process and deference); FirstEnergy comments at 5.

[57] EEI comments at 3.

[58] Ameren comments at 2; EEI comments at 2; FirstEnergy comments at 5; IESO comments at 4.

[59] Ameren comments at 10 (citing NERC Petition at Exhibit B–3 (results of the ballot body vote) and stating ''Indeed, several members of the ballot pool for the VAR–001–1 interpretation indicated their belief that Dynegy's request for an interpretation should have been filed as a Standards Authorization Request because the proposed change is so obviously beyond the scope of the current content of the Reliability Standard'').

[60] EEI comments at 4–5.

[61] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 5; *see* NOPR, FERC Stats. & Regs. ¶ 32,639 at P 30.

[62] *See* NERC comments at 5; Ameren comments at 5; EEI comments at 2; FirstEnergy comments at 3–4; IESO comments at 2–3.

[63] NOPR, FERC Stats. & Regs. ¶ 32,639 at P 30.

[64] NERC comments at 5–6; EEI comments at 2 (citing NERC petition at 12–14); FirstEnergy comments at 5–7; IESO comments at 5. *See also* Ameren comments at 6 (suggesting that procedures in VAR–002–1 would accommodate actual generator capabilities and not permit unsound practices under VAR–001–1, Requirement R4).

that do not reflect sound engineering would not be technically sound.[65] Therefore, the Commission adopts its NOPR proposal, and finds that a voltage schedule should reflect sound engineering, as well as operating judgment and experience.[66] The Commission remands NERC's proposed VAR–001–1, Requirement R4 interpretation, in order that NERC may reconsider its interpretation consistent with this order.

b. Whether Support for a Sound Technical Basis Is Found in Other Reliability Standards and Requirements

50. Several participants, including NERC and Ameren, claim that, in the broader context of the Reliability Standards, there is already an obligation to use technically sound means to comply with VAR–001–1, Requirement R4.[67] The Commission recognizes and appreciates, as part of the NERC filing, the additional information included to allay concerns that generator operators may receive a voltage schedule that is either unsafe or not technically feasible. However, if analysis of other Reliability Standard requirements provides the necessary clarification, such analysis should be made part of the formal interpretation. Thus, in this case, if the actions performed pursuant to other Reliability Standard requirements cited in the participants' comments describe actions that form the basis for development of voltage schedules, then the interpretation should reflect that fact.

51. Some petitioners suggest that other Reliability Standard requirements may mitigate any negative impact of a voltage schedule that lacks a sound technical basis, and thus imply that Requirement R4 need not reflect a sound technical basis, or they suggest that the clarification sought by the Commission is not necessary. The Commission does not agree. As discussed above, voltage schedules developed pursuant to VAR–001–1, Requirement R4 must have a sound technical basis, and failure to properly perform the task would constitute an independent violation of the Reliability Standard.

c. The Commission Is Not Imposing Implicit Requirements

52. The Commission disagrees with participants claiming that the Commission's understanding of Requirement R4 would impermissibly create a new ''implicit'' requirement, or that such requirements would introduce an unworkable subjective analysis into Reliability Standard enforcement. As the NOPR stated, the Commission reviewed each Reliability Standard and, in Order No. 693, approved those containing Requirements that are sufficiently clear as to be enforceable and that do not create due process concerns.[68] The Commission included VAR–001–1 as among the Reliability Standards that are sufficiently clear to inform transmission operators what is required of them.[69] Order No. 693 declined to order more specificity on the technical basis in the current version of VAR–001–1, but instead found that the development of more detailed requirements to address such concerns are best addressed by the ERO through the Reliability Standards development process.[70] However, that finding does not suggest that existing requirements may be performed without any technical basis.

53. FirstEnergy interprets the Commission's proposal as finding that there are ''implicit'' obligations in Requirement R4 that should be explicitly incorporated into the Reliability Standard. To the contrary, as noted in the NOPR, the Commission has elsewhere declined to specify in detail how a registered entity should implement a Reliability Standard,[71] and so we do not direct NERC to modify VAR–001–1, Requirement R4, at this time.[72] The Commission affirms its approval in Order No. 693 of VAR–001–1, Requirement R4, and its finding that Requirement R4 is, as written, sufficiently clear to inform entities of what is required of them.

d. Requirement R4 Is Mandatory and Enforceable

54. Several participants claim that any requirement under VAR–001–1 to issue a technically based voltage schedule cannot be audited or enforced because VAR–001–1 lacks measures or compliance elements associated with such a requirement.[73] We do not agree. In Order No. 693, the Commission approved Reliability Standards without associated measures, stating that it disagreed with comments that a Reliability Standard cannot reasonably be enforced, or is otherwise not just and reasonable, solely because it does not include enforcement measures and compliance elements. The Commission reasoned that while such compliance elements and enforcement measures provided useful guidance, ''compliance will in all cases be measured by determining whether a party met or failed to meet the Requirement given the specific facts and circumstances of its use, ownership or operation of the Bulk-Power System.'' [74]

55. Ameren complains that a remand of the interpretation lacks specific instructions for transmission operators to implement an implicit Requirement. In addition, Ameren speculates that disagreements as to the sufficiency of a particular voltage schedule may arise between parties involved in implementation and enforcement. Again, the Commission affirms its finding in Order No. 693 that Requirement R4 is sufficiently clear; to be enforceable, Reliability Standards need not ''spell out in minute detail all factual scenarios that might violate a Requirement and the precise consequences of that violation.'' [75]

[65] NOPR, FERC Stats. & Regs. ¶ 32,639 at P 31.

[66] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 5 (''a Reliability Standard must provide for the Reliable Operation of Bulk-Power System facilities and may impose a requirement on any user, owner or operator of such facilities. It must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal. The Reliability Standard should be clear and unambiguous regarding what is required and who is required to comply. The possible consequences for violating a Reliability Standard should be clear and understandable to those who must comply. There should be clear criteria for whether an entity is in compliance with a Reliability Standard. While a Reliability Standard does not necessarily need to reflect the optimal method for achieving its reliability goal, a Reliability Standard should achieve its reliability goal effectively and efficiently''); *see also* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 324; *accord* NERC Rules of Procedure, section 302.5.

[67] NERC comments at 8–9 (discussing VAR–001–1, Requirements R2, R9.1 and R11); Ameren comments at 6 (discussing VAR–002–1a, Requirement R2). *See also* EEI comments at 2 (supporting NERC conclusion); IESO comments at 6 (discussing transmission operations Reliability Standards, TOP–002–2, *et al.*). However, participants also suggest that a failure to meet that obligation would not constitute an enforceable violation of VAR–001–1, Requirement R4. *See* EEI comments at 2.

[68] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 274.

[69] *Id.* P 275.

[70] *Id.* P 1869.

[71] NOPR, FERC Stats. & Regs. ¶ 32,639 at P 31; *see also* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 260 (stating that implementation procedures should be included when inextricably linked to the Reliability Standard or when leaving out implementation features could: (1) Sacrifice necessary uniformity in implementation of the Reliability Standard; (2) create uncertainty for the entity that has to follow the Reliability Standard; (3) make enforcement difficult; and (4) increase the complexity of the Commission's oversight and review process).

[72] Requirement R4 does not prescribe any one particular method of achieving compliance, but instead permits transmission operators to implement Reliability Standards through a variety of technically sound means.

[73] Ameren comments at 8; EEI comments at 2; IESO comments at 3.

[74] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 253.

[75] *Id.* P 274–75 (''the Commission finds that none of the Reliability Standards that we approve today

e. Procedural Issues

56. Several participants such as Ameren, FirstEnergy, and EEI are concerned that this interpretation could circumvent the Reliability Standards development process. In this remand, the Commission is not approving new Reliability Standards or Requirements. Such action would be better handled via the Reliability Standards development process. In remanding this interpretation, we are simply instructing NERC to provide a revised interpretation reflecting appropriate consideration of the Commission's ruling that a Reliability Standard ''must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal.'' [76] Furthermore, the Commission, in considering the arguments and comments, has given due weight to the technical expertise of the ERO in deciding how to proceed; the ERO is directed to develop revisions to the Reliability Standard interpretation, consistent with this Final Rule, to address the Commission's concerns.[77]

57. EEI warns the Commission that Dynegy's request raises several process issues and cautions the Commission not to allow a single entity to change a Reliability Standard via an interpretation or any other ''backdoor'' device. The Commission is mindful of EEI's concern, but we do not believe that we have decided the issues here in a way that allows an entity to change a standard through a ''backdoor'' effort.

contains an ambiguity that renders it unenforceable or otherwise unjust and unreasonable'').

[76] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 324.

[77] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 165, 167 (''NERC states that the requirement that a Reliability Standard be ''in the public interest'' provides the Commission with broad discretion to review and approve a Reliability Standard. According to NERC, implicit in the ''public interest'' test is that a Reliability Standard is technically sound and ensures an adequate level of reliability, and that the Reliability Standards provides a comprehensive and complete set of technically sound requirements that establish an acceptable threshold of performance necessary to ensure reliability of the Bulk-Power System.'').

The Commission agrees with NERC that an open and transparent process is important in implementing section 215 of the FPA and developing proposed mandatory Reliability Standards. However, in Order No. 672, the Commission rejected the presumption that a proposed Reliability Standard developed through an ANSI-certified process automatically satisfies the statutory standard of review. Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 338. The Commission reiterates that simply because a proposed Reliability Standard has been developed through an adequate process does not mean that it is adequate as a substantive matter in protecting reliability. We, therefore, review each Reliability Standard to ensure that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

III. Information Collection Statement

58. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) requirements imposed by an agency.[78] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[79]

59. As stated above, the Commission previously approved, in Order No. 693, each of the Reliability Standards that are the subject of the current rulemaking. This Final Rule approves one interpretation to a previously approved Reliability Standard developed by NERC as the ERO, and remands another interpretation. The proffered interpretations relate to existing Reliability Standards and do not change these standards; therefore, they do not add to or otherwise increase entities' current reporting burden. Thus, the Final Rule does not materially and adversely affect the burden estimates relating to the currently effective version of the Reliability Standards presented in Order No. 693.

60. The BAL–003–0 Reliability Standard that is the subject of the approved interpretation was approved in Order No. 693, and the related information collection requirements were reviewed and approved, accordingly.[80] The approved interpretation of BAL–003–0 does not modify or otherwise affect the collection of information already in place. With respect to BAL–003–0, the interpretation clarifies that the minimum frequency bias setting applies to systems that employ a variable bias methodology. Incorporating a minimum frequency bias setting into the determination of frequency response under automatic generation control does not change the information that a balancing authority reports because the same logs, data, or measurements would be maintained.

61. The Commission is remanding the interpretation of VAR–001–1. As a result, information collection requirements for that Reliability Standard will not change at this time.

62. Thus, the interpretations of the current Reliability Standards at issue in this rulemaking will not increase the reporting burden nor impose any additional information collection requirements.

[78] 5 CFR 1320.11.

[79] 44 U.S.C. 3507(d).

[80] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1901–07.

63. However, we will submit this Final Rule to OMB for informational purposes.

Title: Electric Reliability Organization Interpretations of Specific Requirements of Frequency Response and Bias and Voltage and Reactive Control Reliability Standards.

Action: Final Rule.

OMB Control No.: 1902–0244.

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

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves an interpretation of the specific requirements of one Commission-approved Reliability Standard. The Final Rule finds the interpretation just, reasonable, not unduly discriminatory or preferential, and in the public interest. In addition, this rule remands an additional proposed interpretation for further consideration.

Internal Review: The Commission has reviewed the proposed Reliability Standard interpretations and made a determination that the proposed BAL–003–1 interpretation is necessary to implement section 215 of the FPA. The interpretation conforms to the Commission's policy for frequency response and bias within the energy industry as reflected in BAL–003–1.

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

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

IV. Environmental Analysis

66. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

environment.[81] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[82] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

67. The Regulatory Flexibility Act of 1980 (RFA)[83] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[84] For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this Final Rule because the interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

68. In Order No. 693, the Commission adopted policies to minimize the burden on small entities, including approving the ERO compliance registry process to identify those entities responsible for complying with mandatory and enforceable Reliability Standards. The ERO registers only those distribution providers or load serving entities that have a peak load of 25 MW or greater and are directly connected to the bulk electric system or are designated as a responsible entity as part of a required under-frequency load shedding program or a required under-voltage load shedding program. Similarly, for generators, the ERO registers only individual units of 20 MVA or greater that are directly connected to the bulk electric system, generating plants with an aggregate rating of 75 MVA or greater, any blackstart unit material to a restoration plan, or any generator that is material to the reliability of the Bulk-Power System. Further, the ERO will not register an entity that meets the above criteria if it has transferred responsibility for compliance with mandatory Reliability Standards to a joint action agency or other organization. The Commission estimated that the Reliability Standards approved in Order No. 693 would apply to approximately 682 small entities (excluding entities in Alaska and Hawaii), but also pointed out that the ERO's Compliance Registry Criteria allow for a joint action agency, generation and transmission (G&T) cooperative or similar organization to accept compliance responsibility on behalf of its members. Once these organizations register with the ERO, the number of small entities registered with the ERO will diminish and, thus, significantly reduce the impact on small entities.[85]

69. Finally, as noted above, this Final Rule addresses an interpretation of the BAL–003–0 Reliability Standard, which was already approved in Order No. 693, and, therefore, does not create an additional regulatory impact on small entities.[86]

VI. Document Availability

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

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

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

VII. Effective Date and Congressional Notification

73. These regulations are effective June 29, 2009. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12348 Filed 5–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–12–000; Order No.723]

Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction

Issued May 21, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) approves regional Reliability Standard BAL–004–WECC–01 (Automatic Time Error Correction), as submitted by the North American Electric Reliability Corporation. As a separate action, pursuant to section 215(d)(5) of the FPA, the Commission directs the Western Electricity Coordinating Council to develop several modifications to the regional Reliability Standard. The regional Reliability Standard requires balancing authorities within the Western Interconnection to maintain interconnection frequency within a predefined frequency profile and ensure that time error corrections are effectively conducted in a manner that does not adversely affect the reliability of the Interconnection.

[81] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[82] 18 CFR 380.4(a)(2)(ii).

[83] 5 U.S.C. 601–12.

[84] See 13 CFR 121.201.

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

[86] The Commission remands the interpretation of the VAR–001–1 Reliability Standard.

DATES: *Effective Date:* This rule will become effective June 29, 2009.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Order No. 723

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

Order No. 723

Final Rule

Issued May 21, 2009

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves regional Reliability Standard BAL–004–WECC–01 (Automatic Time Error Correction), submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). As a separate action, pursuant to section 215(d)(5) of the FPA, the Commission directs the Western Electricity Coordinating Council (WECC) to develop several modifications to the regional Reliability Standard. The regional Reliability Standard requires balancing authorities within the WECC region to implement an automatic time error correction procedure for the purpose of maintaining Interconnection frequency within a predefined frequency profile and ensuring that time error corrections are effectively conducted in a manner that does not adversely affect reliability.[2]

2. The Reliability Standard benefits the reliable operation of the Bulk-Power System by creating an operating environment that encourages system operators to balance their generation and interchange with their load and losses, thereby minimizing the difference between the net actual and net scheduled interchanges. This process will result in reducing the number of manual time error corrections required by the Western Interconnection Time Monitor, and minimize accumulated inadvertent interchange energy between Western Interconnection balancing authorities.[3] The Commission also accepts three related definitions that are included in the regional Reliability Standard. The Commission further approves the violation risk factors for the regional Reliability Standard, and directs the Electric Reliability Organization (ERO) and WECC to submit revised violation risk factors in a filing within 60 days of the effective date of this Final Rule. The Commission also directs the ERO and WECC to submit violation severity levels for each Requirement and sub-Requirement that has been assigned a violation risk factor within 120 days of the effective date of this Final Rule.

3. As discussed below, the Commission finds that the regional Reliability Standard proposed by WECC satisfies the statutory criteria, and is more stringent than the applicable continent-wide NERC Reliability Standard.

I. Background

A. Mandatory Reliability Standards

4. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

5. In February 2006, the Commission issued Order No. 672,[5] implementing section 215 of the FPA. Pursuant to Order No. 672, the Commission certified one organization, NERC, as the ERO.[6] Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity.[7] When the ERO reviews a regional Reliability Standard that would be applicable on an Interconnection-wide basis and that has been proposed by a Regional Entity organized on an Interconnection-wide basis, the ERO

[1] 16 U.S.C. 824o (2006).

[2] The proposed regional Reliability Standard will be in effect within the Western Interconnection-wide WECC Regional Entity. In this proceeding, the Commission proposes to take action to make mandatory the regional Reliability Standard as it applies within the U.S. portion of the Western Interconnection.

[3] Mismatches between generation and interchange and load and losses result in the Balancing Area operating at frequencies other than 60 Hertz, which causes both time error and inadvertent interchange.

[4] *See* FPA 215(e)(3), 16 U.S.C. 824o(e)(3).

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

[6] *See North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006).

[7] 16 U.S.C. 824o(e)(4).

must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[8]

6. In reviewing the ERO's submission, the Commission will give due weight to the ERO's technical expertise, except concerning the effect of a proposed Reliability Standard on competition.[9] The Commission will also give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard to be applicable within that Interconnection.[10]

7. The Commission may approve a proposed Reliability Standard if the Commission finds it is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[11] In addition, the Commission explained in Order No. 672 that ''uniformity of Reliability Standards should be the goal and the practice, the rule rather than the exception.'' [12] Yet, the Commission recognized that ''the goal of greater uniformity does not, however, mean that regional differences cannot exist.'' [13] The Commission then provided the following guidance:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential, and in the public interest, as required by the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[14]

8. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards originally proposed by NERC.[15] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards.[16] Relevant to the immediate proceeding, the Commission approved continent-wide Reliability Standard BAL–004–0 (Time Error Correction), but noted that WECC's regional approach appears to serve as a more effective means of accomplishing time error corrections.[17]

9. On April 19, 2007, the Commission approved delegation agreements between NERC and each of the eight Regional Entities, including WECC.[18] Pursuant to such agreements, the ERO delegated responsibility to the Regional Entities to enforce the mandatory, Commission-approved Reliability Standards. In addition, the Commission approved, as part of each delegation agreement, a Regional Entity process for developing regional Reliability Standards. In the Delegation Agreement Order, the Commission accepted WECC as a Regional Entity organized on an Interconnection-wide basis and accepted WECC's Standards Development Manual, which sets forth the process for development of WECC's Reliability Standards.[19]

10. In a June 2007 order, the Commission approved eight regional Reliability Standards that apply in the WECC region.[20]

B. Procedural Background

11. On July 29, 2008, NERC submitted for Commission approval, in accordance with section 215(d)(1) of the FPA,[21] regional Reliability Standard BAL–004–WECC–01, which would apply to balancing authorities within the Western Interconnection. NERC stated that the primary purpose of the regional Reliability Standard is to reduce the number of time error corrections imposed on the Western Interconnection by requiring balancing authorities that operate synchronously in the Western Interconnection to automatically correct for their contribution to time error. According to NERC, BAL–004–WECC–01 provides the added benefit of a superior approach over the current NERC manual time error correction (BAL–004–0) for assigning costs and providing for the equitable payback of inadvertent interchange.[22]

12. On November 20, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to approve BAL–004–WECC–01.[23] In response, four interested persons filed comments: NERC, WECC, Consumers Energy Company (Consumers) and Xcel Energy Services Inc (Xcel).

13. In its July 2008 filing, NERC stated that Automatic Time Error Correction or ATEC has been a regional reliability practice in WECC, effectively reducing manual time error corrections, reducing the number of hours of manual time error correction for the Western Interconnection, and reducing the accumulated inadvertent interchange in the Western Interconnection since 2003. NERC asserted that the proposed WECC regional Reliability Standard is more stringent or covers matters not addressed by NERC's continent-wide Reliability Standards, BAL–004–0 and BAL–006–1 (Inadvertent Interchange).

C. Reliability Standard BAL–004–WECC–01

14. Regional Reliability Standard BAL–004–WECC–01 contains four requirements, summarized as follows:

15. *Requirement R1.* Requires that all balancing authorities must continuously participate in Automatic Time Error Correction through their automatic generation control systems. The sub-requirement (R1.1) limits the payback amount to minimize any operating metric violations, while R1.2 addresses actions for cases when invalidated implementation of the ATEC

[8] 16 U.S.C. 824o(d)(3); 18 CFR 39.5(b).

[9] 16 U.S.C. 824o(d)(2).

[10] *Id.*

[11] *Id.*

[12] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 290.

[13] *Id.* P 291.

[14] *Id.*

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

[16] 16 U.S.C. 824o(d)(5). Section 215(d)(5) provides, ''The Commission * * * may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.''

[17] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 377, 382. The Commission also directed NERC to develop a modification to BAL–004–0 to include Levels of Non-Compliance and additional Measures for Requirement R3.

[18] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, *order on reh'g,* 120 FERC ¶ 61,260 (2007) (Delegation Agreement Order).

[19] *Id.* P 469–470.

[20] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 (2007).

[21] 16 U.S.C. 824o(d)(1) (2006).

[22] The NERC glossary defines ''interchange'' as the energy transfers that cross balancing authority boundaries, and defines ''inadvertent interchange'' as the difference between the balancing authority's net actual interchange and its net scheduled interchange. Within a synchronous Interconnection, during real-time operations, a balancing authority may engage in ''inadvertent interchange'' if it experiences an operational problem that prevents its net *actual* interchange of energy from matching its net *scheduled* interchange with other balancing authorities within the Interconnection. This discrepancy will indicate what is referred to as a ''time error''—*i.e.*, because the Interconnection will operate at a frequency (number of cycles per second) that is different from the Interconnection's scheduled frequency of 60 Hz (60 cycles per second). Time error also serves as a means to measure of how much and which balancing authority within the Interconnection is out of balance. To correct the time error using the Automatic Time Error Correction (ATEC) method, it is necessary for the balancing authority that was out of balance to adjust the Interconnection's frequency so that it equalizes its prior inadvertent energy exchange with the Interconnection.

[23] *Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction,* Notice of Proposed Rulemaking, 73 FR 71977 (Nov. 26, 2008), FERC Stats. & Regs. ¶ 32,638 (2008).

methodology occurs and requires adjustments.

16. *Requirement R2.* Requires a balancing authority that operates in any automatic generation control operating mode other than ATEC to notify all other balancing authorities of its operating mode. This requirement is necessary to ensure the reliable operations of the Western Interconnection by creating an operating environment that encourages the Balancing Authorities to minimize the difference between the net actual and net scheduled interchanges. To avoid large accumulation of inadvertent interchanges, Requirement R2 limits a balancing authority's use of operating modes other than ATEC to a maximum of 24 hours per calendar quarter.

17. *Requirement R3.* Requires balancing authorities to have the capability to switch between different automatic generation control operating modes as necessary to operate reliably during various system conditions.

18. *Requirement R4.* Requires each balancing authority to calculate and record its hourly ''Primary Inadvertent Interchange'' when hourly checkout is complete.

19. The WECC regional Reliability Standard also introduces the following three new definitions:

Automatic Time Error Correction: A frequency control automatic action that a Balancing Authority uses to offset its frequency contribution to support the Interconnection's scheduled frequency.

Primary Inadvertent Interchange: The component of area (n) inadvertent interchange caused by the regulating deficiencies of area (n) itself.

Secondary Inadvertent Interchange: The component of area (n) inadvertent interchange caused by the regulating deficiencies of area (i).

20. In its July 2008 filing, NERC asserted that the ATEC procedure provided in the proposed regional Reliability Standard has been effective in mitigating three problems relating to correction of time errors in the Western Interconnection. First, the ATEC procedure has reduced the need for the WECC Time Monitor to conduct manual time error corrections from 216 manual time error corrections in 2003 to 106 manual time error corrections in 2007. Second, since time error is directly related to inadvertent interchange, the ATEC procedure reduces both time error and accumulated inadvertent interchange. Third, according to NERC, the ATEC procedure better identifies the balancing authorities responsible for inadvertent interchange and provides a more equitable and immediate payback of the inadvertent interchange to the balancing authorities that should receive it (*i.e.*, the balancing authorities that did not cause the inadvertent interchange but supported the interconnection's scheduled frequency) than the current NERC time error correction process in BAL–004–0.

21. NERC also stated that the proposed regional Reliability Standard satisfies the factors provided in Order No. 672 that the Commission considers when determining whether a proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[24] According to NERC, BAL–004–WECC–01 is clear and unambiguous regarding what is required and who is required to comply (balancing authorities). NERC also stated that the proposed regional Reliability Standard has clear and objective measures for compliance and achieves a reliability goal (namely, creating an operating environment that encourages system operators to minimize the difference between the net actual and net scheduled interchanges, and to better control frequency) effectively and efficiently.

II. Discussion

22. Pursuant to section 215(d) of the FPA, the Commission approves regional Reliability Standard BAL–004–WECC–01 as mandatory and enforceable.

23. Pursuant to the continent-wide NERC Reliability Standard BAL–004–1, when accumulated time error increases to a predetermined level, the Interconnection's Time Monitor instructs all balancing authorities in the Interconnection to manually change the scheduled Interconnection's frequency until the Interconnection's accumulated time error has been reduced to a set level. However, the requirements of BAL–004–1 do not require each balancing authority to determine what portion of the Interconnection's time error that it alone caused.

24. Under the WECC ATEC methodology, each balancing authority in the Western Interconnection is required to calculate its ''primary inadvertent interchange''[25] and enter its ''primary inadvertent interchange'' into its Area Control Error (ACE)[26] equation. When all balancing authorities input their portion of ''primary inadvertent interchange'' into their ACE equation, they continuously correct for their own ''primary time error'' and, in turn, reduce the Western Interconnection's total time error.

25. This process differs from the methodology used in NERC's BAL–004–1, in that ATEC is designed to place the responsibility to correct primary time error on the balancing authority that causes it. Further, the regional Reliability Standard is more stringent and covers matters not addressed by the related continent-wide NERC Reliability Standards BAL–004–0 and BAL–006–1. The regional Reliability Standard provides for automatic correction of time error, using a more refined primary inadvertent interchange term than that included in the continent-wide NERC Reliability Standards for manual correction of time error.[27] Accordingly, the Commission finds that the regional Reliability Standard proposed by WECC is more stringent than the continent-wide NERC Reliability Standard, because it provides for continuous capture of inadvertent interchange, and thereby (1) contributes to better operation of balancing authorities by operators, and (2) ensures that discrepancies between a balancing area's net scheduled interchange and its net actual interchange are adjusted more quickly and accurately. Pursuant to section 215(d) of the FPA, the Commission approves BAL–004–WECC–01 as just, reasonable, not unduly discriminatory or preferential and in the public interest.

26. As a separate matter, pursuant to section 215(d)(5) of the FPA, the Commission directs WECC to develop, pursuant to its regional Reliability Standards Development Procedure, modifications to BAL–004–WECC–01 to address the Commission's specific concerns, as discussed below. Further, the Commission approves some of the proposed violation risk factors and violation severity levels, and directs the ERO to submit a filing within 60 days of the effective date of this Final Rule revising other specified violation risk factors and another filing within 120 days of the effective date of this Final Rule providing violation severity levels

[24] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 323–337.

[25] The balancing authority causing the frequency error is said to have created ''primary time error'' and caused ''primary inadvertent interchange.'' The other balancing authorities in the Interconnection responding to correct system frequency are said to have created ''secondary time error'' and caused ''secondary inadvertent interchange.''

[26] ACE is the instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into account the effects of Frequency Bias and correction for meter error (NERC glossary of terms used in reliability standards, *http://www.nerc.com/docs/standards/rs/Glossary_2009April20.pdf*, at 1). More specifically: $ACE = (NI_A - NI_S) - 10\beta_i(F_A - F_S) - T_{0b} + I_{ME}$ (Requirement R1 of Commission Approved Standard BAL–001–0.1a, *see http://www.nerc.com/docs/standards/sar/Interpretation_WECC_ATEC_BAL-001and003_BOT-Approved_23Oct07.pdf*).

[27] NERC filing at 10.

for each Requirement and sub-Requirement that has been assigned a violation risk factor.

A. Requirement R1.2

27. Requirement R1.2 of BAL–004–WECC–01 provides in part, ''[l]arge accumulations of primary inadvertent [energy] point to an invalid implementation of ATEC, loose control, metering or accounting errors. A [balancing authority] in such a situation should identify the source of the error(s) and make the corrections.'' In the NOPR, the Commission noted that the phrases ''large accumulation'' and ''in such a situation'' are not defined and, while likely obvious in many circumstances, leaves to individual interpretation when a ''large'' amount of primary inadvertent has accumulated.[28] The Commission proposed to direct WECC to develop revisions to the provision so that a balancing authority will know with specificity the circumstances that trigger the actions required by Requirement R1.2.

1. Comments

28. WECC acknowledges the Commission's concern that the undefined phrases ''large accumulation'' and ''in such a situation'' in Requirement R1.2 could lead to uncertainty among Balancing Authorities as to when they are required to take action. WECC comments that, while these terms have a general industry understanding within the Western Interconnection, clarifying these terms would remove the potential for controversy over compliance requirements. WECC suggests either defining the terms within the regional Reliability Standard or modifying the standard language to better identify specific parameters that would trigger actions required under this standard.

29. NERC agrees that further clarity of the identified phrases in Requirement R1.2 is appropriate and believes WECC's proposal in its comments is responsive.

2. Commission Determination

30. As we explained in the NOPR, the Commission is concerned that the phrases ''large accumulation'' and ''in such a situation'' as used in Requirement R1.2 leave to individual interpretation when a ''large'' amount of primary inadvertent has accumulated. The ERO and WECC agree that the provision could benefit from further clarity. Accordingly, the Commission adopts its NOPR proposal and directs WECC to develop revisions to the provision so that a balancing authority will know with specificity the circumstances that trigger the actions required by Requirement R1.2.

B. Explanation of 24-Hour Exemption Period of Requirement R2

31. Requirement R2 of BAL–004–WECC–01 provides that ''[e]ach [balancing authority] while synchronously connected to the Western Interconnection will be allowed to have ATEC out of service for a maximum of 24 hours per calendar quarter, for reasons including maintenance and testing.'' In the NOPR, the Commission proposed to direct WECC to develop a modification that clarifies whether the ''maximum of 24 hours per calendar quarter'' refers to a single occurrence of up to 24 hours in the calendar quarter, or whether several occurrences are permitted as long as they add up to 24 hours or less within a calendar quarter.[29]

1. Comments

32. WECC comments that it intended the 24-hour per calendar quarter limit to permit an accumulated total of up to 24 hours, whether resulting from one extended occurrence or multiple occurrences. Likewise, NERC understands that WECC intended the provision to permit an accumulated total of up to 24 hours from one or more occurrences.

33. WECC and NERC agree the proposed NOPR modifications will leave the regional Reliability Standard more definite and can be addressed through WECC's stakeholder process.

2. Commission Determination

34. Consistent with the NOPR, pursuant to section 215(d)(5) of the FPA, the Commission directs WECC to develop a modification to the regional Reliability Standard consistent with WECC's and NERC's explanation that the limit set forth in Requirement 2 of ''24 hours per calendar quarter'' is an accumulated total for the period, resulting from either a singular event or a cumulative time limit from a number of events.

C. New Glossary Definitions

35. As mentioned above, the WECC regional Reliability Standard includes three new definitions: Automatic Time Error Correction, Primary Inadvertent Interchange and Secondary Inadvertent Interchange. In the NOPR, the Commission proposed to approve the three new terms.[30]

1. Comments

36. Consumers expresses concern regarding the incorporation of three newly defined terms (Automatic Time Error Correction, Primary Inadvertent Interchange and Secondary Inadvertent Interchange) into the NERC glossary. Consumers states that it is appropriate for the three new definitions to apply to WECC regional Reliability Standards. However, according to Consumers, the definitions have not been vetted through NERC's full development process for their inclusion in the NERC glossary, applicable to NERC Reliability Standards that apply on a continent-wide basis. Specifically, Consumers points out that NERC's Rules of Procedure provide that all definitions must be approved in accordance with the standards process.[31] Consumers recommends that the Commission either clearly designate the proposed definitions as being applicable only to WECC regional Reliability Standards or direct NERC to submit the proposed definitions for stakeholder review as part of the NERC Reliability Standards development process.

2. Commission Determination

37. The Commission agrees with Consumers that the three new definitions have not been vetted through the ERO's full development process for their inclusion in the NERC glossary; and that the three new definitions approved in this Final Rule apply only to WECC regional Reliability Standards. NERC should designate them accordingly. Therefore, to ensure that all approved definitions, NERC and regional, are maintained in a single location, NERC should add or append the three new regional definitions to the NERC Glossary of Terms in such a way as to designate that they apply only in the Western Interconnection.

38. The Commission, however, has a general concern regarding the development of definitions that apply only to regional Reliability Standards. The Commission understands that, prior to NERC's development of the ''Version 0'' Reliability Standards, there were multiple regional standards and protocols, with each region having its own definitions of terms. In some instances, the same or similar terms were defined differently within different

[28] NOPR at P 36.

[29] NOPR at P 37.

[30] NOPR at P 26. While the Commission discussed the proposed definitions in several places in the NOPR, in one instance the Commission stated that it proposed to ''accept three related definitions for inclusion in the NERC Reliability Standards Glossary (NERC glossary).'' *Id.* P 2. In other instances, the Commission simply stated that it proposed to approve the definitions. *Id.* P 26, 34.

[31] Consumers Comments at 4, citing NERC Rules of Procedure, section 300 and Appendix 3A (NERC Reliability Standards Development Procedure) at 8.

regions. The Version 0 process included developing the NERC glossary, which eliminated many inconsistencies in terminology across regions and created a single source for defining terms used in Reliability Standards.

39. We are concerned about a potential re-proliferation of regional terminology, and consequently, the need to prevent possible inconsistent use of terminology among regions. While NERC has only submitted WECC regional Reliability Standards to the Commission at this time, other regions are in the process of developing regional standards. Similar to our policy set forth in Order No. 672 that favors the development of uniform Reliability Standards,[32] the Commission believes NERC, as a rule, should develop definitions that apply uniformly across the different interconnections. As a general goal, NERC should work to minimize the use of regional definitions and terminology and, assure that proposed regional definitions and terminology are as well defined as, do not conflict and are not redundant with nor redefine, NERC glossary definitions. We therefore direct NERC to develop in its Rules of Procedure, a methodology for organizing and managing regional definitions and terminology consistent with the principles discussed above.

40. Further, NERC should be vigilant to assure that a regional definition is consistent with both NERC definitions and the approved terms used in other regions. The Commission considers an inconsistency or conflict in terms to be reasonable grounds to remand a regional definition and, if appropriate, the regional Reliability Standard that employs that definition.

D. Consistency With NERC Reliability Standards

1. Comments

41. Xcel comments that, while it generally supports the adoption of BAL–004–WECC–01, it is concerned that the regional Reliability Standard creates a potential conflict with two NERC Reliability Standards, BAL–001–0a (Real Power Balancing Control Performance) and BAL–002–0 (Disturbance Control Performance). Xcel requests that the Commission establish priority for compliance in the event that WECC regional Reliability Standards conflict with those of NERC. Xcel's concern involves the difference in the ACE equation between the regional and the NERC Reliability Standards and the compliance elements regarding this equation.

42. Xcel states that BAL–001–0a requires that ACE be kept within specific parameters, while BAL–004–WECC–01 requires a measurement of ACE that is outside those parameters to be maintained at all times. According to Xcel, BAL–004–WECC–01 requires ATEC operation at all times except up to 24 hours per calendar quarter, but is not clear if this period covers times when complying with BAL–001–0a requires non-compliance with BAL–004–WECC–01. Xcel notes that Requirement R3 of BAL–004-WECC–01 requires the ACE used for NERC reports to be the same as the ACE used in the current AGC operating mode. According to Xcel, this requires the use of the ACE_{ATEC} set forth in BAL–004–WECC–01 rather than the BAL–001–0a ACE equation in most situations.

43. Xcel claims that BAL–004–WECC–01 may also conflict with BAL–002–0 Requirement R4.2, which requires that the balancing authority restore ACE to specified parameters within a defined timeframe. Xcel posits that in most situations it will be impossible for an entity attempting to recover from a disturbance to operate at an ACE calculated in accordance with the NERC standard and ACE_{ATEC} simultaneously. According to Xcel, the use of the BAL–004–WECC–01, Requirement R2 exception, allowing ATEC to be out of service for 24 hours per calendar quarter, should be acceptable for alleviating this circumstance. Xcel contends that, where the 24-hour maximum is exceeded for the purpose of ACE complying with BAL–002–0, the balancing authority should be given express authority to deviate from the requirements of BAL–004–WECC–01.

2. Commission Determination

44. We are not persuaded by Xcel's comments on this matter. We believe that our approval, in Order No. 713,[33] of an ERO interpretation addresses Xcel's concern. Specifically, WECC requested that the ERO provide a formal interpretation whether the use of WECC's automatic time error correction factor that is applied to the net interchange portion of the ACE equation violates Requirement R1 of NERC Reliability Standard BAL–001–0a. In response, the ERO interpreted BAL–001–0 Requirement R1 as follows:

- The [WECC automatic time error correction or WATEC] procedural documents ask Balancing Authorities to maintain raw ACE for [control performance standard or CPS1 [34]] reporting and to control via WATEC-adjusted ACE.
- As long as Balancing Authorities use raw (unadjusted for WATEC) ACE for CPS reporting purposes, the use of WATEC for control is not in violation of BAL–001 Requirement 1.[35]

45. The Commission-approved interpretation makes clear that a balancing authority is in compliance with BAL–001–1a provided that it uses the equation identified in R1 for reporting CPS1 and achieves the performance required by CPS1. The balancing authority's ability to use the ACE calculation also to assist in time error correction and inadvertent interchange payback is not precluded.

46. Further, the Commission is not persuaded by Xcel's claims that BAL–004–WECC–01 may also conflict with BAL–002–0, Requirement R4.2, which requires that the balancing authority restore ACE to specified parameters within a defined timeframe. Requirements R2 and R3 of Standard BAL–004–WECC–0 direct that ATEC will be the primary operating mode used by all balancing authorities in the WECC region. However, balancing authorities may modify their ACE operating mode to account for various operating situations, including the need to respond to meeting the Disturbance Recovery Criterion within the Disturbance Recovery Period in Requirement R4.2 of BAL–002–0.[36]

47. Nor does the Commission agree with Xcel's concern about the 24-hour per quarter ATEC operating mode exception period. Giving due consideration to the Western Interconnection's participants, the Commission finds that a 24-hour per quarter ATEC operating mode exception period encourages the Western Interconnection's balancing authorities to maintain a high standard of operations to support the reliability of the Western Interconnection.

[32] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 290 (''The Commission believes that uniformity of Reliability Standards should be the goal and the practice, the rule rather than the exception. Greater uniformity will encourage best practices, thereby enhancing reliability and benefiting consumers and the economy'').

[33] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and electric Reliability Organization Interpretation of specific Requirements of Four Reliability Standards,* Order No. 713, 73 FR 43613, 124 FERC ¶ 61,071 (July 21, 2008).

[34] The Control Performance Standard (CPS) is defined in the NERC Glossary as ''[t]he reliability standard that sets the limits of a Balancing Authority's Area Control Error over a specified time period.''

[35] Order No. 713, 124 FERC ¶ 61,071 at P 17.

[36] R4.2 provides that ''[t]he default Disturbance Recovery Period is 15 minutes after the start of a Reportable Disturbance,'' but further states that ''[t]his period may be adjusted to better suit the needs of an Interconnection based on analysis approved by the NERC Operating Committee.''

48. Consequently, the Commission is not persuaded by Xcel's comments. As discussed above, the ERO and the Commission have previously addressed the issue raised by Xcel, and the Commission does not believe that remand or further clarification is warranted.

E. Violation Risk Factors

49. In the NOPR, the Commission proposed to direct that the violation risk factors assigned to BAL–004–WECC–01, Requirements R1, R2, R3, and R4 be modified from ''lower'' to ''medium.'' [37] The Commission explained that the participation in an interconnection's time error correction is critical and can directly affect the state of the Bulk-Power System.[38] Further, the Commission explained that the assignment of a ''medium'' violation risk factor to the Requirements of the WECC regional Reliability Standard would make it consistent with the assignment of ''medium'' violation risk factors to NERC Reliability Standard BAL–004–0.

1. Comments

50. WECC comments that, while it is unlikely that a violation of the regional Reliability Standard would lead to Bulk-Power System instability, it acknowledges that ATEC is not administrative in nature and could affect the electrical status of the Bulk-Power System making a 'Medium' VRF more appropriate. Thus, WECC comments that ''it does not disagree'' with the Commission's proposal to change the violation risk factors from low to medium. NERC also agrees that the Commission's proposal would promote consistency.

2. Commission Determination

51. We adopt our NOPR proposal and direct that the violation risk factors assigned to BAL–004–WECC–01, Requirements R1, R2, R3, and R4 be modified from ''lower'' to ''medium.'' The ERO and WECC must submit a filing within 60 days of the effective date of this Final Rule that includes the directed modifications.

F. Violation Severity Levels

52. The ERO's July 2008 filing of the WECC regional Reliability Standard included proposed violation severity levels that apply generally to all violations of the Requirements of BAL–004–WECC–01 and not to any one specific Requirement. In the NOPR, the Commission proposed to direct the submission of new violation severity levels for each Requirement and sub-Requirement that has been assigned a violation risk factor.[39]

1. Comments

53. WECC comments that the Commission's and NERC's guidance on the development of violation severity levels has evolved since the drafting of the violation severity levels for BAL–004–WECC–1. WECC indicates that it will develop violation severity levels for each Requirement and sub-Requirement of the regional Reliability Standard, and requests that the Commission allow sufficient time to address the issue through the WECC stakeholder process.

2. Commission Determination

54. The Commission adopts its NOPR proposal and directs the ERO and WECC to submit violation severity levels for each Requirement and sub-Requirement that has been assigned a violation risk factor. To allow adequate time for the development of the violation severity levels, the ERO and WECC must submit a filing within 120 days of the effective date of this Final Rule that includes the directed violation severity levels.

III. Information Collection Statement

55. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by agency rules.[40] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[41] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

56. This Final Rule approves and requires modifications of one regional Reliability Standard that was submitted by NERC as the ERO. Section 215 of the FPA authorizes the ERO to submit Reliability Standards to provide for the reliable operation of the Bulk-Power System. Pursuant to the statute, the ERO must submit each Reliability Standard that it proposes to be made effective to the Commission for approval.[42]

57. The regional Reliability Standard, which applies to approximately 35 balancing authorities in the U.S. portion of the Western Interconnection, does not require balancing authorities to file information with the Commission. It does require balancing authorities to develop and maintain certain information for a specified period of time, subject to inspection by WECC. However, the Commission does not believe that approval of the WECC regional Reliability Standard will result in an increase in reporting burdens as compared to current practices in WECC. As NERC indicates, since 2003, WECC has used the automatic time error correction practice set forth in BAL–004–WECC–01. Thus, the Commission finds that the requirement to develop and maintain information in the regional Reliability Standard mirrors customary and usual business practice in the area in which the Standard will apply and, therefore, imposes a minimal burden on applicable balancing authorities and eliminates any possible confusion between current industry practice and the standard. The Commission also finds that the modifications to the current Reliability Standard effected by this Final Rule will not increase the reporting burden nor impose any additional information collection requirements.

58. In response to the NOPR, the Commission received no comments concerning its determination with respect to the burden and costs and therefore uses the same affirmation here.

Title: Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction.

Action: Final Rule.

OMB Control No.: 1902–0244.

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

Frequency of Responses: On occasion.

Necessity of the Information: This Final Rule approves and requires modification to one regional Reliability Standard that pertains to automatic time error correction in the Western Interconnection. The Final Rule finds the Reliability Standard to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

59. Interested persons may obtain information on the reporting requirements by contacting: Federal

[37] NOPR at P 44–47.

[38] *Id.* P 46.

[39] NOPR at P 49. We note that, in *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 722, 126 FERC ¶ 61,255 at P 45 (2009), the ERO proposed to develop violation severity levels for Requirements but not sub-Requirements. The Commission denied the proposal as ''premature'' and, instead, encouraged the ERO to ''develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors.''

[40] 5 CFR 1320.11.

[41] 44 U.S.C. 3507(d).

[42] *See* 16 U.S.C. 824(d).

Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415, Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov*, or by contacting: Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control No. 1902–0244), Washington, DC 20503, Tel: (202) 395–4650, Fax: (202) 395–7285, E-mail: *oira_submission@omb.eop.gov*.

IV. Environmental Analysis

60. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[43] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[44] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

61. The Regulatory Flexibility Act of 1980 (RFA)[45] generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. (*See* 13 CFR 121.201.) For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.

62. As noted above, the regional reliability standard would apply to about 35 balancing areas in the Western Interconnection. The Commission estimates that of these balancing areas, approximately two to four qualify as small entities, because the total electric output of each of these entities for the preceding twelve months did not exceed four million megawatt hours. Thus, few small entities are impacted by the proposed rule.

63. Based on this understanding, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

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

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

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

VII. Effective Date and Congressional Notification

67. The Reliability Standard approved in this Final Rule is effective June 29, 2009. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12351 Filed 5–27–09; 8:45 am]

BILLING CODE 6717–01–P

[43] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[44] 18 CFR 380.4(a)(2)(ii).

[45] 5 U.S.C. 601–12.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9450]

RIN 1545–BE73

Information Reporting for Lump-Sum Timber Sales

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the information reporting requirements contained in section 6045(e) of the Internal Revenue Code (Code) on sales or exchanges of standing timber for lump-sum (outright) payments. The final regulations amend § 1.6045–4 of the Income Tax Regulations to require real estate reporting persons, as defined in section 6045(e)(2) of the Code, to report lump-sum payments received by sellers (landowners) for sales or exchanges of standing timber. The final regulations do not change the information reporting requirements that currently apply to sales or exchanges of standing timber for pay-as-cut (contingent) payments under section 6050N of the Code.

DATES:

Effective date: These regulations are effective on May 28, 2009.

Applicability date: The amendments to paragraphs (b)(2)(i)(E), (b)(2)(ii) and (c)(2)(i) of § 1.6045–4 shall apply to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy S. Sheppard of the Office of Chief Counsel (Procedure and Administration), at (202) 622–4910.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1085. The collection of information in these final regulations is

in § 1.6045–4. This information is required by the IRS to verify compliance with income reporting obligations with respect to lump-sum sales of timber. This information will be used to enable the IRS to verify that a taxpayer is reporting the correct amount of income.

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 return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations under section 6045(e) of the Code. These amendments provide that sales or exchanges of standing timber for lump-sum payments are ''reportable real estate'' transactions under § 1.6045–4(b)(2) and, thus, shall be reported as provided in section 6045(e) and the regulations.

On November 29, 2007, a notice of proposed rulemaking (REG–155669–04) was published in the **Federal Register** (72 FR 67589). No comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. Accordingly, the proposed regulations are adopted by this Treasury decision. The final regulations make certain minor clarifying changes to the rules of the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information burden imposed by these regulations flows directly from section 6045(e) of the Code. Moreover, requiring information reporting as described in the preamble with regard to sales or exchanges of standing timber for lump-sum payments imposes minimal burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Timothy S. Sheppard of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6045–4 is amended by:

■ 1. Redesignating paragraph (b)(2) introductory text as (b)(2)(i) introductory text.

■ 2. In redesignated paragraph (b)(2)(i), further redesignating paragraphs (2)(i), (2)(ii), (2)(iii), and (2)(iv) as paragraphs (2)(i)(A), (2)(i)(B), (2)(i)(C), and (2)(i)(D), respectively.

■ 3. Redesignating the undesignated text after newly designated paragraph (b)(2)(i)(D) as paragraph (b)(2)(ii) and adding a sentence at the end of newly-designated paragraph (b)(2)(ii).

■ 4. Adding new paragraph (b)(2)(i)(E).

■ 5. Revising paragraphs (c)(2)(i) and (s).

The revisions and additions read as follows:

§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(E) Any non-contingent interest in standing timber.

(ii) * * * Further, the term ''ownership interest'' includes any contractual interest in a sale or exchange of standing timber for a lump-sum payment that is fixed and not contingent.

* * * * *

(c) * * *

(2) * * *

(i) An interest in surface or subsurface natural resources (for example, water, ores, and other natural deposits) or crops, whether or not such natural resources or crops are severed from the land. For purposes of this section, the terms ''natural resources'' and ''crops'' do not include standing timber.

* * * * *

(s) Effective/applicability date. This section applies for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur on or after January 1, 1991. The amendments to paragraphs (b)(2)(i)(E), (b)(2)(ii) and (c)(2)(i) of this section shall apply to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: May 15, 2009.

Bernard J. Knight, Jr.,

Acting General Counsel of the Treasury.

[FR Doc. E9–12298 Filed 5–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 546

Darfur Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is adding a new part to the Code of Federal Regulations to implement Executive Order 13400 of April 26, 2006, ''Blocking Property of Persons in Connection With the Conflict in Sudan's Darfur Region.''

DATES: *Effective Date:* May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On November 3, 1997, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706 (''IEEPA''), issued Executive Order 13067 (62 FR 59989, November 5, 1997) (''E.O. 13067'') declaring a national emergency with respect to the Government of Sudan's policies and actions. These policies and actions included supporting international terrorism, destabilizing neighboring governments, and committing widespread human rights violations. Subsequently, on October 13, 2006, the President issued Executive Order 13412 (71 FR 61369, October 17, 2006) (''E.O. 13412'') to take additional steps with respect to the emergency declared in E.O. 13067 and to implement the Darfur Peace and Accountability Act of 2006. The Office of Foreign Assets Control (''OFAC'') promulgated the Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), on July 1, 1998, to implement the provisions of E.O. 13067. A final rule amending the SSR to implement the provisions of E.O. 13412 was published in the **Federal Register** on October 31, 2007 (72 FR 61513).

On April 26, 2006, under the authority of, *inter alia*, IEEPA and section 5 of the United Nations Participation Act, 22 U.S.C. 287c (''UNPA''), the President issued Executive Order 13400 (71 FR 25483, May 1, 2006) (''E.O. 13400''), effective at 12:01 a.m. eastern daylight time on April 27, 2006. At the time that he issued E.O. 13400, the President condemned the continued violations of the N'djamena Ceasefire Agreement of April 8, 2004, and the Abuja Humanitarian and Security Protocols of November 9, 2004, by all sides in Darfur, as well as the deterioration of the security situation in Darfur and the negative impact this had on humanitarian assistance efforts. The President also strongly condemned the continued violence against civilians, including sexual violence against women and girls, as noted by the United Nations Security Council in Resolution 1591 of March 29, 2005. To deal with the threat to the national security and foreign policy of the United States posed by this situation, E.O. 13400 expanded the scope of the national emergency declared in E.O. 13067 with respect to the policies and actions of the Government of Sudan. It also took the additional steps of blocking all property and interests in property of certain persons in connection with the conflict in Darfur.

Section 1(a) of E.O. 13400 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of United States persons of: (1) the persons listed in the Annex to E.O. 13400; and (2) any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

- To have constituted a threat to the peace process in Darfur;
- To have constituted a threat to stability in Darfur and the region;
- To be responsible for conduct related to the conflict in Darfur that violates international law;
- To be responsible for heinous conduct with respect to human life or limb related to the conflict in Darfur;
- To have directly or indirectly supplied, sold, or transferred arms or any related materiel, or any assistance, advice, or training related to military activities to: (i) The Government of Sudan; (ii) the Sudan Liberation Movement/Army; (iii) the Justice and Equality Movement; (iv) the Janjaweed; or (v) any person (other than a person listed in (i)–(iv) above) operating in the states of North Darfur, South Darfur, or West Darfur that is a belligerent, a nongovernmental entity, or an individual;
- To be responsible for offensive military overflights in and over the Darfur region;
- To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described above, or any person listed in or designated pursuant to E.O. 13400; or
- To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to E.O. 13400.

In Section 1(b) of E.O. 13400, the President determined that the making of donations of certain articles, such as food, clothing, and medicine intended to be used to relieve human suffering, as specified in section 203(b)(2) of IEEPA, 50 U.S.C. 1702(b)(2), by, to, or for the benefit of any person listed in or designated pursuant to E.O. 13400 would seriously impair his ability to deal with the national emergency declared in E.O. 13067 and expanded in E.O. 13400, and the President therefore prohibited such donations. Accordingly, the donation of such items is prohibited, unless authorized by OFAC.

Section 1(c) of E.O. 13400 provides that the prohibition on any transaction or dealing by a United States person or within the United States in blocked property and interests in property includes, but is not limited to, the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person listed in or designated pursuant to E.O. 13400, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 2 of E.O. 13400 prohibits any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in E.O. 13400, as well as any conspiracy formed to violate such prohibitions.

Section 5 of E.O. 13400 authorizes the Secretary of the Treasury, after consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of E.O. 13400. In furtherance of these purposes, OFAC is promulgating these Darfur Sanctions Regulations, 31 CFR part 546 (the ''Regulations''). As described above, these sanctions are targeted sanctions directed at certain actors in connection with the conflict in Darfur, and are separate from the Sudanese Sanctions Regulations, 31 CFR part 538.

Subpart B of the Regulations implements the prohibitions contained in sections 1 and 2 of E.O. 13400. *See, e.g.*, §§ 546.201 and 546.205. Persons identified in the Annex to E.O. 13400, designated by or under the authority of the Secretary of the Treasury pursuant to E.O. 13400, or otherwise subject to the blocking provisions of E.O. 13400 are referred to throughout the Regulations as ''persons whose property and interests in property are blocked pursuant to § 546.201(a).'' The names of persons listed in or designated pursuant to E.O. 13400 are or will be published on OFAC's Specially Designated Nationals and Blocked Persons List, which is accessible via OFAC's Web site, and can be found at Appendix A to 31 CFR chapter V. Those names also have been or will be published in the **Federal Register**.

Sections 546.202 and 546.203 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, and

liquidated financial obligations, in interest-bearing blocked accounts. Section 546.204 of subpart B provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners or operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that blocked property may, in OFAC's discretion, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 546.205 implements the prohibitions in sections 2(a) and 2(b) of E.O. 13400 on any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in E.O. 13400, and on any conspiracy formed to violate such prohibitions.

Subpart C of the Regulations defines key terms used throughout the Regulations, and subpart D sets forth interpretive sections regarding the general prohibitions contained in subpart B. Section 546.411 sets out the rule that the property and interests in property of an entity are blocked if the entity is 50 percent or more owned by a person whose property and interests in property are blocked, whether or not the entity itself is listed in or designated pursuant to E.O. 13400.

Transactions otherwise prohibited under the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E or by a specific license issued pursuant to the procedures described in subpart E of part 501 of 31 CFR chapter V. Subpart E of part 546 also contains certain statements of licensing policy, in addition to the general licenses.

Subpart F of the Regulations refers to subpart C of part 501 for applicable recordkeeping and reporting requirements. Subpart G describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty. Subpart G also refers to Appendix A of part 501 for a more complete description of these procedures.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of authority by the Secretary of the Treasury. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 546

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Darfur, Penalties, Reporting and recordkeeping requirements, Securities, Services, Sudan.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 546 to 31 CFR Chapter V to read as follows:

PART 546—DARFUR SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

546.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

546.201 Prohibited transactions involving blocked property.
546.202 Effect of transfers violating the provisions of this part.
546.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
546.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
546.205 Evasions; attempts; conspiracies.

Subpart C—General Definitions

546.301 Arms or any related materiel.
546.302 Blocked account; blocked property.
546.303 Effective date.
546.304 Entity.
546.305 Interest.
546.306 Licenses; general and specific.
546.307 Person.
546.308 Property; property interest.
546.309 Transfer.
546.310 United States.
546.311 U.S. financial institution.
546.312 United States person; U.S. person.

Subpart D—Interpretations

546.401 Reference to amended sections.
546.402 Effect of amendment.
546.403 Termination and acquisition of an interest in blocked property.
546.404 Transactions ordinarily incident to a licensed transaction.
546.405 Provision of services.
546.406 Offshore transactions.
546.407 Payments from blocked accounts to satisfy obligations prohibited.
546.408 Charitable contributions.
546.409 Credit extended and cards issued by U.S. financial institutions.
546.410 Setoffs prohibited.
546.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

546.501 General and specific licensing procedures.
546.502 Effect of license or authorization.
546.503 Exclusion from licenses.
546.504 Payments and transfers to blocked accounts in U.S. financial institutions.
546.505 Entries in certain accounts for normal service charges authorized.
546.506 Investment and reinvestment of certain funds.
546.507 Provision of certain legal services authorized.
546.508 Authorization of emergency medical services.

Subpart F—Reports

546.601 Records and reports.

Subpart G—Penalties

546.701 Penalties.
546.702 Pre-Penalty Notice; settlement.
546.703 Penalty imposition.
546.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

546.801 Procedures.
546.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

546.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 546.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501

of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 546.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13400 of April 26, 2006; and

(2) Any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) To have constituted a threat to the peace process in Darfur;

(ii) To have constituted a threat to stability in Darfur and the region;

(iii) To be responsible for conduct related to the conflict in Darfur that violates international law;

(iv) To be responsible for heinous conduct with respect to human life or limb related to the conflict in Darfur;

(v) To have directly or indirectly supplied, sold, or transferred arms or any related materiel, or any assistance, advice, or training related to military activities to:

(A) The Government of Sudan;

(B) The Sudan Liberation Movement/Army;

(C) The Justice and Equality Movement;

(D) The Janjaweed; or

(E) Any person (other than a person listed in paragraph (a)(2)(v)(A) through (a)(2)(v)(D) of this section) operating in the states of North Darfur, South Darfur, or West Darfur that is a belligerent, a nongovernmental entity, or an individual;

(vi) To be responsible for offensive military overflights in and over the Darfur region;

(vii) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraphs (a)(2)(i) through (a)(2)(vi) of this section or any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(viii) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

Note 1 to paragraph (a) of § 546.201: The names of persons listed in or designated pursuant to Executive Order 13400, whose property and interests in property are blocked pursuant to paragraph (a) of this section, are published on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') (which is accessible via the Office of Foreign Assets Control's Web site), published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier ''[DARFUR].'' See § 546.411 concerning entities that may not be listed on the SDN list but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 546.201: Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') explicitly authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published on the SDN List, published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier ''[BPI–DARFUR].''

Note 3 to paragraph (a) of § 546.201: Sections 501.806 and 501.807 of this chapter V describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions when engaged in by a United States person or within the United States:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

§ 546.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 546.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 546.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to

the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13400, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 546.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 546.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 546.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 546.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 546.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 546.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 546.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 546.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 546.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 546.301 Arms or any related materiel.

The term *arms or any related materiel* shall mean arms or related materiel of all types, military aircraft, and equipment, but excludes:

(a) Supplies and technical assistance, including training, intended solely for use in authorized monitoring, verification, or peace support operations, including such operations led by regional organizations;

(b) Supplies of non-lethal military equipment intended solely for humanitarian use, human rights monitoring use, or protective use, and related technical assistance, including training;

(c) Supplies of protective clothing, including flak jackets and military helmets, for use by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only;

(d) Assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement signed January 9, 2005, by the Government of Sudan and the People's Liberation Movement/Army; and

(e) Other movements of military equipment and supplies into the Darfur region by the United States or that are permitted by a rule or decision of the Secretary of State, after consultation with the Secretary of the Treasury.

§ 546.302 Blocked account; blocked property.

The terms *blocked account* and blocked property shall mean any account or property subject to the prohibitions in § 546.201 held in the name of a person whose property and interests in property are blocked pursuant to § 546.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

Note to § 546.302: See § 546.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.303 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 546.201(a)(1), 12:01 a.m. eastern daylight time, April 27, 2006;

(b) With respect to a person whose property and interests in property are blocked pursuant to § 546.201(a)(2), the earlier of the date of actual or constructive notice of such person's designation.

§ 546.304 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 546.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 546.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 546.306: See § 501.801 of this chapter on licensing procedures.

§ 546.307 Person.

The term *person* means an individual or entity.

§ 546.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 546.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 546.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 546.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository

institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 546.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 546.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 546.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 546.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 546.201(a), unless there exists in the property another interest that is blocked pursuant to § 546.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 546.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 546.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 546.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 546.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.405 Provision of services.

(a) The prohibitions on transactions involving blocked property contained in § 546.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 546.201(a); or

(2) With respect to property interests subject to § 546.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 546.201(a).

Note to § 546.405: See §§ 546.507 and 546.508 on licensing policy with regard to the provision of certain legal or medical services.

§ 546.406 Offshore transactions.

The prohibitions in § 546.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 546.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 546.201(a) has or has had an interest since the effective date.

§ 546.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 546.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 546.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 546.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 546.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person.

§ 546.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 546.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether

by a U.S. bank or other U.S. person, is a prohibited transfer under § 546.201 if effected after the effective date.

§ 546.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 546.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 546.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13400 or designated pursuant to § 546.201(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 546.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 546.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 546.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 546.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 546.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 546.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 546.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 546.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 546.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 546.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 546.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons whose property and interests in property are blocked pursuant to § 546.201(a).

§ 546.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 546.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 546.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 546.201(a) is prohibited unless specifically licensed in accordance with § 546.202(e).

§ 546.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 546.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 546.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 546.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note to paragraph (a)(1) of § 546.701: As of the date of publication in the **Federal Register** of the final rule adding this part to 31 CFR chapter V (May 28, 2009), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to Penalty Amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (''UNPA''), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under title 18, United States Code, imprisoned not more than five years, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 546.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to the Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it

must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 546.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a written Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 546.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 546.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 546.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13400, and any further Executive orders relating to the national emergency declared in Executive Order 13067, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 546.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: May 12, 2009.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

Approved: May 13, 2009.

Stuart A. Levey,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. E9–11952 Filed 5–27–09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 547

Democratic Republic of the Congo Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is adding a new part to the Code of Federal Regulations to implement Executive Order 13413 of October 27, 2006, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo.''

DATES: *Effective Date:* May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On October 27, 2006, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') and section 5 of the United Nations Participation Act (22 U.S.C. 287c), issued Executive Order 13413 (71 FR 64105, October 31, 2006) (''E.O. 13413''), effective at 12:01 a.m. eastern standard time on October 30, 2006. In E.O. 13413, the President determined that the situation in or in relation to the Democratic Republic of the Congo (the ''DRC'') constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat. E.O. 13413 noted United Nations Security Council Resolutions 1596 of April 18, 2005, 1649 of December 21, 2005, and 1698 of July 31, 2006, which, *inter alia*, expressed serious concern over the destabilizing presence of armed groups

and militias in the DRC. In addition, numerous other United Nations Security Council Resolutions condemned these militias and armed groups for committing serious violations of human rights and international humanitarian law, including the massacre of civilians, sexual violence against women and girls, and the recruitment and use of children in the hostilities.

Section 1(a) of E.O. 13413 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of United States persons, of: (1) the persons listed in the Annex to E.O. 13413; and (2) any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

- To be a political or military leader of a foreign armed group operating in the DRC that impedes the disarmament, repatriation, or resettlement of combatants;
- To be a political or military leader of a Congolese armed group that impedes the disarmament, demobilization, or reintegration of combatants;
- To be a political or military leader recruiting or using children in armed conflict in the DRC in violation of applicable international law;
- To have committed serious violations of international law involving the targeting of children in situations of armed conflict in the DRC, including killing and maiming, sexual violence, abduction, and forced displacement;
- To have directly or indirectly supplied, sold, or transferred to the DRC, or been the recipient in the territory of the DRC of, arms and related materiel, including military aircraft and equipment, or advice, training, or assistance, including financing and financial assistance, related to military activities;
- To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in the criteria of clause 2 above or any person listed in or designated pursuant to E.O. 13413; or
- To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to E.O. 13413.

In section 1(b) of E.O. 13413, the President determined that the making of donations of certain articles, such as food, clothing, and medicine intended to be used to relieve human suffering, as specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13413 would seriously impair his ability to deal with the national emergency declared in E.O. 13413, and the President therefore prohibited such donations. Accordingly, the donation of such items is prohibited, unless authorized by OFAC.

Section 1(c) of E.O. 13413 provides that the prohibition on any transaction or dealing by a United States person or within the United States in blocked property or interests in property includes, but is not limited to, the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of, any person whose property and interests in property are blocked pursuant to E.O. 13413, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 2 of E.O. 13413 prohibits any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in E.O. 13413, as well as any conspiracy formed to violate such prohibitions.

Section 5 of E.O. 13413 authorizes the Secretary of the Treasury, after consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of E.O. 13413. In furtherance of these purposes, OFAC is promulgating these Democratic Republic of the Congo Sanctions Regulations, 31 CFR Part 547 (the ''Regulations''). As described above, these sanctions are targeted sanctions directed at certain persons who contribute to the conflict in the DRC. The sanctions are not directed against the country of the DRC or the Government of the DRC. They do not generally prohibit trade or the provision of banking or other financial services to the country of the DRC, unless the transaction or service in question involves a person whose property and interests in property are blocked pursuant to § 547.201(a).

Subpart B of the Regulations implements the prohibitions contained in sections 1 and 2 of E.O. 13413. *See, e.g.*, §§ 547.201 and 547.205. Persons identified in the Annex to E.O. 13413 or designated by or under the authority of the Secretary of the Treasury pursuant to E.O. 13413, or otherwise subject to the blocking provisions of E.O. 13413 are referred to throughout the Regulations as ''persons whose property and interests in property are blocked pursuant to § 547.201(a).'' The names of persons listed in or designated pursuant to E.O. 13413 are or will be published on OFAC's Specially Designated Nationals and Blocked Persons List, which is accessible via OFAC's Web site and can be found at Appendix A to 31 CFR chapter V. Those names also have been or will be published in the **Federal Register**.

Sections 547.202 and 547.203 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in interest-bearing blocked accounts. Section 547.204 of subpart B provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners or operators of such property and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that blocked property may, in OFAC's discretion, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 547.205 implements the prohibitions in sections 2(a) and 2(b) of E.O. 13413 on any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in E.O. 13413, and on any conspiracy formed to violate such prohibitions.

Subpart C of the Regulations defines key terms used throughout the Regulations and subpart D sets forth interpretive sections regarding the general prohibitions contained in subpart B. Section 547.411 sets out the rule that the property and interests in property of an entity are blocked if the entity is 50 percent or more owned by a person whose property and interests in property are blocked, whether or not the entity itself is listed in or designated pursuant to E.O. 13413.

Transactions otherwise prohibited under the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E or by a specific license issued pursuant to the procedures described in subpart E of part 501 of 31 CFR chapter V. Subpart E of part 547 also contains certain statements of licensing policy in addition to the general licenses.

Subpart F of the Regulations refers to subpart C of part 501 for applicable recordkeeping and reporting requirements. Subpart G describes the civil and criminal penalties applicable

to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty. Subpart G also refers to Appendix A of part 501 for a more complete description of these procedures.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of authority by the Secretary of the Treasury. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 547

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Democratic Republic of the Congo, Penalties, Reporting and recordkeeping requirements, Securities, Services.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 547 to 31 CFR Chapter V to read as follows:

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
547.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

547.201 Prohibited transactions involving blocked property.
547.202 Effect of transfers violating the provisions of this part.
547.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
547.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
547.205 Evasions; attempts; conspiracies.

Subpart C—General Definitions

547.301 Arms or any related materiel.
547.302 Blocked account; blocked property.
547.303 Effective date.
547.304 Entity.
547.305 Interest.
547.306 Licenses; general and specific.
547.307 Person.
547.308 Property; property interest.
547.309 Transfer.
547.310 United States.
547.311 U.S. financial institution.
547.312 United States person; U.S. person.

Subpart D—Interpretations

547.401 Reference to amended sections.
547.402 Effect of amendment.
547.403 Termination and acquisition of an interest in blocked property.
547.404 Transactions ordinarily incident to a licensed transaction.
547.405 Provision of services.
547.406 Offshore transactions.
547.407 Payments from blocked accounts to satisfy obligations prohibited.
547.408 Charitable contributions.
547.409 Credit extended and cards issued by U.S. financial institutions.
547.410 Setoffs prohibited.
547.411 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

547.501 General and specific licensing procedures.
547.502 Effect of license or authorization.
547.503 Exclusion from licenses.
547.504 Payments and transfers to blocked accounts in U.S. financial institutions.
547.505 Entries in certain accounts for normal service charges authorized.
547.506 Investment and reinvestment of certain funds.
547.507 Provision of certain legal services authorized.
547.508 Authorization of emergency medical services.

Subpart F—Reports

547.601 Records and reports.

Subpart G—Penalties

547.701 Penalties.
547.702 Pre-Penalty Notice; settlement.
547.703 Penalty imposition.
547.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

547.801 Procedures.
547.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

547.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 547.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 547.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13413 of October 27, 2006; and

(2) Any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) To be a political or military leader of a foreign armed group operating in the Democratic Republic of the Congo

that impedes the disarmament, repatriation, or resettlement of combatants;

(ii) To be a political or military leader of a Congolese armed group that impedes the disarmament, demobilization, or reintegration of combatants;

(iii) To be a political or military leader recruiting or using children in armed conflict in the Democratic Republic of the Congo in violation of applicable international law;

(iv) To have committed serious violations of international law involving the targeting of children in situations of armed conflict in the Democratic Republic of the Congo, including killing and maiming, sexual violence, abduction, and forced displacement;

(v) To have directly or indirectly supplied, sold, or transferred to the Democratic Republic of the Congo, or been the recipient in the territory of the Democratic Republic of the Congo of, arms and related materiel, including military aircraft and equipment, or advice, training, or assistance, including financing and financial assistance, related to military activities;

(vi) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraphs (a)(2)(i) through (a)(2)(v) of this section or any person whose property and interests in property are blocked pursuant to this paragraph (a); or

(vii) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this paragraph (a).

Note 1 to paragraph (a) of § 547.201: 1. The names of persons listed in or designated pursuant to Executive Order 13413, whose property and interests in property are blocked pursuant to paragraph (a) of this section, are published on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') (which is accessible via the Office of Foreign Assets Control's Web site), published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier ''[DRC].'' See § 547.411 concerning entities that may not be listed on the SDN list but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 547.201. Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') explicitly authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published on the SDN List, published in the **Federal Register** and incorporated into Appendix A to this chapter with the identifier ''[BPI–DRC].''

Note 3 to paragraph (a) of § 547.201. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions when engaged in by a United States person or within the United States:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

§ 547.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 547.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 547.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13413, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any

regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 547.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 547.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term blocked interest-bearing account means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 547.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 547.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 547.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 547.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 547.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 547.201(a) may, in the discretion of the Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 547.205 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by a U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart C—General Definitions

§ 547.301 Arms or any related materiel.

The term *arms or any related materiel* means arms or related materiel of all types, including military aircraft and equipment, but excludes:

(a) Supplies of arms and related materiel, technical training, and assistance intended solely for support of or use by units of the army and police of the Democratic Republic of the Congo, provided that said units:

(1) Have completed the process of their integration; or

(2) Operate under the command, respectively, of the état-major intégré of the Armed Forces or of the National Police of the Democratic Republic of the Congo;

(3) Are in the process of their integration in the territory of the Democratic Republic of the Congo outside the provinces of North and South Kivu and the Ituri district; and

(4) The supplies of arms and related materiel, technical training, and assistance described in paragraphs (a)(1) through (a)(3) of this section are delivered or provided only to receiving sites as designated by the Government of National Unity and Transition, in coordination with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and advance notification of such delivery or provision is provided to the Secretary of State;

(b) Supplies of arms and related materiel, as well as technical training and assistance intended solely for support of or use by MONUC;

(c) Supplies of non-lethal military equipment, and related technical assistance and training, intended solely for humanitarian or protective use, following advance notification to the Secretary of State; and

(d) Supplies of arms and related materiel, training, and technical assistance intended solely for support of or use by the European Union force deployed to support MONUC.

§ 547.302 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 547.201 held in the name of a person whose property and interests in property are blocked pursuant to § 547.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

Note to § 547.302: See § 547.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.303 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person whose property and interests in property are blocked pursuant to § 547.201(a)(1), 12:01 a.m. eastern standard time on October 30, 2006;

(b) With respect to a person whose property and interests in property are blocked pursuant to § 547.201(a)(2), the earlier of the date of actual or constructive notice of such person's designation.

§ 547.304 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 547.305 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (*e.g.*, ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 547.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 547.306: See § 501.801 of this chapter on licensing procedures.

§ 547.307 Person.

The term *person* means an individual or entity.

§ 547.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 547.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 547.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 547.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 547.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 547.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 547.402 Effect of amendment.

Unless otherwise specifically provided, any amendment,

modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 547.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 547.201(a), unless there exists in the property another interest that is blocked pursuant to § 547.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 547.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 547.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 547.201(a); or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(c) *Example.* A license authorizing Company A, whose property and interests in property are blocked pursuant to § 547.201(a), to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, broker, transfer agents, banks, etc., provided that such other parties are not themselves persons whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.405 Provision of services.

(a) The prohibitions on transactions involving blocked property contained in § 547.201 apply to services performed in the United States or by U.S. persons, wherever located, including by an overseas branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 547.201(a); or

(2) With respect to property interests subject to § 547.201.

(b) *Example.* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 547.201(a).

Note to § 547.405: See §§ 547.507 and 547.508 on licensing policy with regard to the provision of certain legal or medical services.

§ 547.406 Offshore transactions.

The prohibitions in § 547.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of a person whose property and interests in property are blocked pursuant to § 547.201(a), or property in which a person whose property and interests in property are blocked pursuant to § 547.201(a) has or has had an interest since the effective date.

§ 547.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 547.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

§ 547.408 Charitable contributions.

Unless specifically authorized by the Office of Foreign Assets Control pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing or medicine, may be made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 547.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of a person whose property and interests in property are blocked pursuant to § 547.201(a) if made by, to, or in the name of such a person; if made by, to, or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person.

§ 547.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 547.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 547.201 if effected after the effective date.

§ 547.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 547.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 547.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13413 or designated pursuant to § 547.201(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 547.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 547.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the

Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

§ 547.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 547.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 547.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 547.504: See § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 547.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 547.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 547.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 547.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 547.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.*, through pledging or other use) to persons whose property and interests in property are blocked pursuant to § 547.201(a).

§ 547.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 547.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 547.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 547.201(a) is prohibited unless specifically licensed in accordance with § 547.202(e).

§ 547.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 547.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 547.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 547.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note to paragraph (a)(1) of § 547.701: As of the date of publication in the **Federal Register** of the final rule adding this part to 31 CFR chapter V (May 28, 2009), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (''UNPA''), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(d) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (c) of this section.

(e) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined under title 18, United States Code, imprisoned not more than five years, or both.

(f) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 547.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 547.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 547.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 547.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 547.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13413 of October 27, 2006, and any further Executive orders relating to the national emergency declared in Executive Order 13413, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 547.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to record keeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: May 12, 2009.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

Approved: May 13, 2009.

Stuart A. Levey,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. E9–11953 Filed 5–27–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0351]

Drawbridge Operation Regulations; Passaic River, Harrison, NJ, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Dock Bridge across the Passaic River, mile 5.0, at Harrison, New Jersey. This deviation will allow the bridge to remain closed all day on Saturday and Sunday for nine weekends to facilitate track repairs.

DATES: This deviation is effective from May 30, 2009 through August 2, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0351 and are available Online at *http://www.regulations.gov.* They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165, e-mail *joe.arca@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Amtrak Dock Bridge at mile 5.0, across the Passaic River, at Harrison New Jersey, has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water.

The owner of the bridge, the Port Authority of New York and New Jersey, requested this temporary deviation to facilitate track repairs to be conducted on nine weekends at the bridge. The bridge can not open during the prosecution of these repairs and the work must be conducted on weekends because during week days the frequency of rail traffic crossings is prohibitive. Vessels able to pass under the closed draw may do so at all times.

The Amtrak Dock Bridge has not received a request to open for vessel traffic since 2004.

Under this temporary deviation the Amtrak Dock Bridge may remain in the closed position all day on Saturday and Sunday on the following weekends: May 30 and 31; June 6 and 7; June 13 and 14; June 20 and 21; June 27 and 28; July 11 and 12; July 18 and 19; July 25 and 26, and August 1 and 2, 2009.

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

Dated: May 13, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–12383 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 513

[GSAR Amendment 2009–07; GSAR Case 2007–G502 (Change 35); Docket 2008–0007; Sequence 6]

RIN 3090–AI67

General Services Administration Acquisition Regulation; GSAR Case 2007–G502, Rewrite of GSAM Part 513, Simplified Acquisition Procedures

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by revising and updating the agency's implementation of Federal Acquisition Regulation (FAR) Part 13, Simplified Acquisition Procedures.

DATES: *Effective Date:* May 28, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925, or by email at *meredith.murphy@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2009–0007, GSAR case 2007–G502 (Change 35).

SUPPLEMENTARY INFORMATION:

A. Background

This is part of the GSAM Rewrite Project, initiated in 2006 to revise, update, and simplify the GSA Acquisition Manual (GSAM). An Advance Notice of Proposed Rulemaking (ANPR), with a request for comments, was published in the **Federal Register** at 71 FR 7910 on February 15, 2006. No public comments were received in response to GSAM Part 513. Prior to publication of the ANPR, internal comments were incorporated. The current GSAM Part 513 implements three of the FAR Part 13 subparts and the policy at GSAM 513.003. There are no clauses associated with GSAM Part 513, and no supplementary subparts. The proposed rule deleted the policy statement at GSAM 513.003 and certain GSA-specific forms that are redundant to standard or optional forms in the FAR, as well as the GSAM text associated with them.

The GSA review team noted that the GSAM Part 513 material currently coded as regulatory, *i.e.*, GSAR, does not, in fact, contain regulatory material. The GSAR 513.302–70, 513.303–3(a) and (b), and 513.307 are considered policy, and this material has been converted to GSAM from GSAR. This change is shown by lining out the current GSAR text. The effect is to remove all of the GSAM Part 513 GSAR material. However, this former GSAR material has been retained, with some modifications, in the GSAM, which is also available to the public on the GSAM web site.

A notice of proposed rulemaking was published in the **Federal Register** at 73 FR 44955 on August 1, 2008. The public comment period for the proposed rule closed September 30, 2008. No comments were received. Therefore, the proposed rule is being converted to a final rule without change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes are primarily editorial in nature. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. No comments were received in response to the shift from GSAR to GSAM.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 513

Government procurement.

Dated: May 14, 2009.

David A. Drabkin,

Acting Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR part 513 as set forth below:

■ 1. The authority citation for 48 CFR part 513 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

PART 513 [Removed and Reserved]

■ 2. Remove and reserve Part 513 consisting of Subpart 513.3 and sections 513.302, 513.302–70, 513.303, 513.303–3, and 513.307.

[FR Doc. E9–12375 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 080416577–9898–03]

RIN 0648–AW73

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; Amendment 27

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 27 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These regulations amend the Crab Rationalization Program to: implement the statutory requirements of section 122(e) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act that specifically directs NMFS to modify how individual processing quota (IPQ) use caps apply to a person who is custom processing *Chionoecetes opilio* crab in the North Region; clarify that for other crab fisheries, IPQ crab that is processed at a facility through contractual arrangements with the facility owners will not be applied against the IPQ use cap of the facility owners provided specific conditions are met; and modify IPQ use caps that limit the amount of IPQ that may be used at a facility by persons processing Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Effective June 29, 2009.

ADDRESSES: Copies of Amendment 27, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the categorical exclusion prepared for this action, and the Environmental Impact Statement (EIS), RIR, FRFA, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region at 709 West 9th Street, Room 420A, Juneau, AK, or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries.htm.*

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). A final rule implementing the Crab Rationalization Program (Program) published on March 2, 2005 (70 FR 10174). Regulations implementing the FMP, and all amendments to the Program are at 50 CFR part 680 and general regulations related to fishery management at 50 CFR part 600.

Program Overview

Harvester, Processor, and Community Provisions

The Program established a limited access privilege program (LAPP) for nine crab fisheries in the BSAI, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch (TAC), called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

The Program seeks to ensure that communities that were historically active as processing ports continue to receive socioeconomic benefits from crab deliveries through regional delivery requirements, commonly known as regionalization. Even if processors transfer their PQS/IPQ, the Program specifies geographic regions where Class A IFQ must be delivered, and where IPQ must be used to receive that crab. The specific geographic regions applicable to Class A IFQ and IPQ are based on historic geographic delivery and processing patterns. Class B, CVC, CPO, and CPC IFQ are not subject to regionalization. For most crab fisheries, CVO QS and the resulting Class A IFQ, and PQS and the resulting IPQ, are regionally designated for the North Region (i.e., north of 54°20′ N. lat.), or the South Region (i.e., any location south of 54° 20′ N. lat.) based on the historic delivery and processing patterns of a specific CVO QS or PQS holder. For one fishery, the Western Aleutian Islands golden king crab fishery, half of the Class A IFQ and IPQ are designated for the West region, west of 174° W. long., and the other half of the Class A IFQ and IPQ are not subject to a regional designation. Two crab fisheries are not subject to regionalization requirements, the eastern Bering Sea and western Bering Sea *C. bairdi* fisheries.

For communities that were historically active processing ports, the Program provides a right-of-first-refusal (ROFR) to purchase any PQS or IPQ that are derived from processing activities in those communities. The ROFR provision requires that any processor who wishes to transfer the PQS or IPQ in a specific crab fishery originally derived from processing activities in specific communities for use outside of those communities cannot complete that transfer unless they first provide those communities an opportunity to purchase the PQS or IPQ under the same terms and conditions offered to the processor to whom they wish to transfer those shares. The specific communities and fisheries eligible for the ROFR are described in regulation at 50 CFR 680.2. The intent behind the ROFR is to provide communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community. The rationale for the specific fisheries and communities subject to ROFR requirements is described in detail in the EIS prepared for the Program (see **ADDRESSES**).

Use Caps

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, and the resulting annual IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the EIS prepared for the Program (see **ADDRESSES**). To address these concerns, the Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IFQ that can be used onboard a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

Currently, processors are limited in how much IPQ they can receive at a processing facility. In each of the nine BSAI crab fisheries under the Program, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery and using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery. In addition, no person is permitted to use more than 60 percent of the IPQ crab in the Bering Sea *C. opilio* fishery designated for exclusive use in the north region. Finally, no processing facility can be used to process more than 30 percent of the IPQ in a crab fishery.

The Program is designed to minimize the potential that PQS and IPQ use caps could be evaded through the use of corporate affiliations or other legal relationships that would effectively allow a single person to use PQS or IPQ even if they are not the majority owner of that PQS or IPQ. Prior to Amendment 27, the Program calculated a person's IPQ use cap by summing the total amount of IPQ that is (1) held by that person; (2) held by other persons who are affiliated with that person through common ownership or control; and (3) any IPQ crab that is custom processed at a facility an IPQ holder owns. A custom processing arrangement exists when one IPQ holder: (1) has a contract with the owners of a processing facility to have his crab processed at that

facility; (2) that IPQ holder does not have an ownership interest in the processing facility; and (3) that IPQ holder is not otherwise affiliated with the owners of that crab processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to his specifications. Custom processing arrangements typically occur when an IPQ holder does not own an onshore processing facility or cannot economically operate a stationary floating crab processor in a specific region. Relevant to this action, in each of the nine Program fisheries, a person is limited to holding no more than an amount equal to 30 percent of the PQS initially issued in a given BSAI crab fishery and limited to using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given BSAI crab fishery. In addition, no person is permitted to use more than 60 percent of the IPQ crab issued in the Bering Sea *C. opilio* fishery designated for exclusive use in the North Region. Finally, no processing facility can be used to process more than 30 percent of the IPQ issued for a crab fishery.

Amendment 27

Amendment 27 accomplishes three broad goals. First, it establishes regulations necessary to implement section 122(e) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) which became law on January 12, 2007 (Public Law 109–479). Second, it modifies the methods used to calculate and apply use caps when custom processing arrangements occur. Third, it establishes a limit on the maximum amount of processing that may be undertaken at processing facilities in the Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab fisheries.

Section 122(e) of the MSRA specifically directs NMFS to modify how IPQ use caps apply to a person who is custom processing Bering Sea *C. opilio* crab in the North Region. Section 122(e) of the MSRA states:

(e) USE CAPS.—

(1) IN GENERAL.—Notwithstanding sections 680.42(b)(ii)(2) and 680.7(a)(ii)(7) of title 50, Code of Federal Regulations, custom processing arrangements shall not count against any use cap for the processing of opilio crab in the Northern Region so long as such crab is processed in the North region by a shore-based crab processor.

(2) SHORE–BASED CRAB PROCESSOR DEFINED.—In this paragraph, the term ''shorebased processor'' means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, that is located on shore or moored within the harbor.

To fully implement section 122(e) of the MSRA, NMFS must adopt conforming regulations. However, several of the specific terms used in section 122(e), such as ''custom processing arrangements'' and ''moored within the harbor,'' are not defined in the statute or in regulation and Congress did not provide legislative history to guide NMFS on how to interpret those terms.

In response, the Council received guidance from the public and adopted recommendations to revise the Program to implement section 122(e) of the MSRA. During this process, participants in other crab fisheries expressed concerns about the economic viability of their fishing operations and proposed IPQ use cap exemptions for custom processing arrangements similar to those congressionally mandated for the north region Bering Sea *C. opilio* fishery. Specifically, participants in crab fisheries with historically low TAC allocations or active in crab fisheries in more remote geographic regions argued that exempting IPQ crab processed under custom processing arrangements from the IPQ use caps of the owners of facilities could improve their operational efficiency. The Council recommended Amendment 27 to clarify that IPQ holders who hold at least a 10 percent or greater direct or indirect ownership interest in a processing facility would not be considered as using IPQ when that IPQ crab was (1) received by an IPQ holder at their facility under a custom processing arrangement; (2) limited to specific crab fisheries; (3) received and processed at specific types of processing facilities; or (4) was IPQ crab that was derived from PQS earned from processing in specific communities where crab has been historically delivered. In addition, the Council recommended limits on the amount of IPQ crab that could be processed at a facility for the Aleutian Islands golden and red king crab fisheries. In December 2007, the Council adopted these recommended changes in addition to the clarifications necessary to implement section 122(e) of the MSRA and forwarded Amendment 27 to the Secretary for review.

Notice of Availability and Proposed Rule

NMFS published the notice of availability for Amendment 27 on September 11, 2008 (73 FR 52806), with a public comment period that closed on November 10, 2008. NMFS published the proposed rule for this action on September 19, 2008 (73 FR 54346), with a public comment period that closed on November 3, 2008. NMFS received 12 public comments from 3 unique persons on Amendment 27 and the proposed rule, which are summarized and responded to below.

Changes to the Program

This rule modifies or adds regulations at §§ 680.7(a)(7), 680.7(a)(8), 680.7(a)(9), 680.42(b)(2), and 680.42(b)(7). These changes are described in the following sections.

Exempting Custom Processing Arrangements from IPQ Use Caps

For certain crab fisheries, this rule removes the requirement that NMFS apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. The changes to § 680.7(a)(7) modify the calculation of a person's IPQ use cap to be the sum of the IPQ held by that person, either directly or indirectly through subsidiary corporations, and all IPQ held by any IPQ holders affiliated with that person. Effectively, this change does not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility. A person who holds IPQ and who owns a processing facility is credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps.

In sum, the rule allows processing facility owners who also hold IPQ to be able to use their facility to establish custom processing arrangements with other IPQ holders to process more crab at their facilities, thereby improving throughput and providing a more economically viable processing platform. Conceivably, most or all of the IPQ crab to which the exemption applies could be processed at a single facility depending on the degree of affiliation that may exist between IPQ holders who have an ownership interest in the facility and the number of IPQ holders that establish custom processing arrangements with a given facility owner. The affiliation relationships among IPQ holders and processing facility ownership can change with time, so the degree of processing consolidation that may occur at a given processing facility in a specific crab fishery cannot be predicted. The analysis prepared for this action notes the possibility that IPQ crab designated for a specific region could be processed

at a single facility and notes the potential benefits that may accrue from increased efficiencies in processing (see **ADDRESSES**). A more extensive discussion of the rationale for relieving processing restrictions is provided in the preamble to the proposed rule (see **ADDRESSES**).

Removing IPQ Crab Under Custom Processing Arrangement From The Facility Use Cap

Consistent with the exemption for custom processing arrangements from IPQ use caps, this rule amends the regulations at § 680.7(a)(8) so that IPQ crab processed under a custom processing arrangement do not apply against the limit on the maximum amount of IPQ crab that can be processed at a facility in which no IPQ holder has a 10 percent or greater ownership interest. The rule effectively removes that limit so that more than 30 percent of the IPQ could be processed at a facility in which no IPQ holder has a 10 percent or greater direct or indirect ownership interest in the processing facility, provided those IPQ crab are custom processed at that facility.

Removing IPQ Crab under Custom Processing Arrangement In The North Region C. opilio Fishery From IPQ Use Cap Calculations

The rule modifies regulations at § 680.42(b)(2) so that IPQ crab processed under a custom processing arrangement do not apply against the IPQ use cap limitation that no person can use more than 60 percent of the Bering Sea *C. opilio* IPQ designated for the North Region. This exemption for IPQ crab custom processed in the Bering Sea *C. opilio* fishery in the North Region meets the intent of section 122(e) of the MSRA to exempt custom processing arrangements from this use cap.

To conform to section 122(e) of the MSRA, this rule modifies § 680.42(b)(2) to allow persons holding Bering Sea *C. opilio* IPQ designated for delivery in the North Region to establish custom processing arrangements to have their IPQ crab processed at a facility. The IPQ crab processed under those custom processing arrangements do not apply against the Bering Sea *C. opilio* use cap of IPQ holders who own the facility where those crab are custom processed.

Fisheries Subject To Custom Processing Arrangement Exemption

The rule establishes regulations at § 680.42(b)(7)(ii)(A) that list the six crab fisheries for which the custom processing arrangement exemption applies. These are: Bering Sea *C. opilio* with a North Region designation, Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, Western Aleutian golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab. In these six crab fisheries, IPQ crab that are processed under a custom processing arrangement do not apply against the use cap of IPQ holders who own the facility where those crab are custom processed.

Facilities Where Custom Processing Arrangements Are Exempt From Use Caps

The rule establishes regulations at § 680.42(b)(7)(ii)(B) that exempt IPQ crab under custom processing arrangements in the six crab fisheries described above from applying to the IPQ use cap of the owner of that facility if that facility meets specific requirements. Consistent with section 122(e) of the MSRA, the Council recommended that any IPQ crab that were custom processed do not count against the IPQ use cap of persons holding a 10 percent or greater direct or indirect ownership interest in the facility where those IPQ crab were custom processed if the facility is: (1) in a home rule, first class, or second class city in the State of Alaska on the effective date of this rule; and (2) either a shorebased crab processor (i.e., shoreside), or a stationary floating crab processor that is moored within a harbor at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka.

In addition to the requirement that a facility be located in a home rule, first class, or second class city, the facility needs to be a shoreside processor, or be a stationary floating crab processor that is moored at a dock, docking facility, or other permanent mooring buoy located in a harbor within the municipal boundaries of the city. An exemption to the requirement that a stationary floating crab processor must be moored within a harbor at a dock, docking facility, or other permanent mooring buoy is provided for the City of Atka as described below.

The requirement that a stationary floating crab processor be moored within a harbor within city boundaries is consistent with the statutory language of section 122(e) of MSRA. Although section 122(e) applies only to the *C. opilio* fishery in the North Region, the Council, with one exception for the City of Atka, did not wish to apply different standards to the use of stationary floating crab processors for purposes of applying an IPQ use cap exemption for custom processed crab in different crab fisheries. NMFS determined that a uniform standard will reduce confusion among fishery participants and ease enforcement of this provision.

The Council recommended that a stationary floating crab processor would not be required to be moored within a harbor in the city of Atka. Currently, the city of Atka lacks an onshore processing facility capable of processing crab economically. These conditions do not appear to exist in other cities with substantial history of crab processing, and so an exemption to the mooring requirements does not appear necessary in other communities where custom processing is likely to occur. The preamble to the proposed rule contains a more detailed description of the rationale for the provisions specific to Atka (see **ADDRESSES**).

NMFS defines home rule, first class, and second class cities and the boundaries of those cities as those that are in existence as of the effective date of this rule. Fixing the specific communities and their boundaries facilitates compliance with this provision and assists these municipalities or the State of Alaska in considering effects on processors who rely on the existing municipalities and the boundaries of those existing municipalities in any future action to redesignate these cities or modify their boundaries.

Use Cap Exemptions For IPQ Crab Subject To ROFR Requirements

This rule adds regulations at § 680.42(b)(7)(ii)(C) to exempt IPQ crab derived from PQS that is, or once was, subject to ROFR requirements and that is to be custom processed within the boundaries of an eligible crab community (ECC) with whom the ROFR contract applies, or did apply, from the IPQ use cap of the owner of the facility where those crab are custom processed. Any IPQ crab derived from this PQS and custom processed within that community would be exempt from the IPQ use cap of persons who own the crab processing facility.

The fisheries subject to ROFR contract requirements are the Eastern Aleutian Islands golden king crab, Bristol Bay red king crab, Bering sea *C. opilio* crab, Pribilof Islands red and blue king crab, and St. Matthew blue king crab fisheries. The eight ECCs are Akutan, Dutch Harbor, False Pass, King Cove, Kodiak, Port Moller, Saint George, and Saint Paul. The net effect of this provision is to allow consolidation of processing through custom processing arrangements in these specific communities that are historically

dependent on crab processing operations.

This provision differs from the more general custom processing IPQ use cap exemptions in several ways. First, processing can occur only within the boundaries of the ECCs. Second, Bristol Bay red king crab as well as Bering Sea *C. opilio* crab designated for either the North Region or the South Region could be custom processed at facilities within the ECCs and does not apply to the IPQ use cap of the facility owners. Third, only IPQ derived from PQS that is, or was, subject to a ROFR with an ECC and transferred to another person can be custom processed at a facility within that community, and does not apply to the IPQ use cap of the owner of the facility. Fourth, this provision does not require that these IPQ crab be processed at specific types of facilities, only that the IPQ crab be processed within the boundaries of the ECC. Therefore, this provision does not require the IPQ crab to be processed only onshore or on stationary floating crab processors that are moored at a dock or a permanent mooring buoy in a harbor.

IPQ Use Cap For Eastern Aleutian Islands Golden King Crab and Western Aleutian Islands Red King Crab

The rule adds regulations at § 680.7(a)(9) that prohibit a person from processing more than 60 percent of the IPQ issued for the Western Aleutian Islands red king crab or Eastern Aleutian Islands golden king crab fisheries in a crab fishing year at a single processing facility east of 174° W. long. This provision applies to all IPQ processed at a shoreside crab processor or stationary floating crab processor, and does not exempt IPQ crab that are delivered under a custom processing arrangement from IPQ use cap calculations. The Council's intent behind this provision is to limit the potential consolidation of IPQ that could occur under the custom processing exemptions contained in this rule. This processing limit prevents excessive consolidation of the number of markets available to harvesters, a scenario that is more likely in these fisheries compared to the other fisheries with custom processing exemptions given their historically relatively small TACs compared to other crab fisheries.

In addition, this provision minimizes the potentially adverse effects on processing facilities west of 174° W. long. by preventing the complete consolidation of IPQ in processing facilities east of 174° W. long. Due to the limited TAC in the Eastern Aleutian Islands golden king crab fishery, and the currently limited number of PQS holders, processing could consolidate in one or a few facilities east of 174° W. long., such as Dutch Harbor or other ports where PQS holders in this fishery currently own processing facilities. Processors owning facilities west of 174° W. long. expressed concern about their ability to effectively compete in these fisheries if all of the catch were processed in one facility east of 174° W. long.

Response to Comments

Comment 1: The Fisheries Impact Statement prepared to support the proposed rule did not adequately describe the foreseeable impacts of the proposed rule on certain processing operations in the Aleutian Islands Pacific cod fishery. The commenter notes that he has provided testimony to the Council recommending that limits be placed on the amount of Pacific cod that may be processed by vessels that have historically been used as stationary floating crab processors in the *C. oplilo* fishery. The commenter believes that Pacific cod processing limits should be established and notes that such processing limits are not included as part of this action.

Response: Section 303(a)(9) of the MSA requires that a fishery management plan include a fishery impact statement:

> [W]hich shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—
>
> (A) participants in the fisheries and fishing communities affected by the plan or amendment;
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> (B) participants in the fisheries conducted in adjacent areas *under the authority of another Council* [emphasis added], after consultation with such Council and representatives of those participants; and
>
> (C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery.''

Section 303(a)(9)(B) requires the Council and NMFS to examine the likely effects of Amendment 27 on participants in other fisheries under the jurisdiction of fishery management councils other than the North Pacific Fishery Management Council. It is not clear that section 303(a)(9)(B) applies to this action. The EEZ off Alaska under the authority of the Council is not adjacent to the EEZ of any other state under the authority of any other fishery management council. Second, this action would not be expected to have ''likely effects'' because this action is limited to amending the FMP for crab fisheries in the BSAI and these stocks are not harvested in fisheries under the authority of other fishery management councils.

NMFS and the Council did conduct a Fishery Impact Statement consistent with section 303(a)(9) of the MSA that assessed, specified, and analyzed the likely effects of Amendment 27. The Fishery Impact Statement is contained in section 4.2 of the RIR/IRFA prepared for this action and notes ''[t]he impacts of the alternatives on participants in the harvesting sector and processing sector have been discussed in previous sections of this document. This action will have no effect on participants in other fisheries.'' Specifically, the RIR/IRFA contains a discussion of the impacts of the action on harvesters, processors, and fishing communities. Section 2.4.7 contains a discussion of the potential effects of this action on participants in other fisheries including groundfish fisheries such as Pacific cod. Specifically, section 2.4.7 notes that:

> Processor concerns have focused primarily on the activity of floating processors that have historically participated in the Bering Sea C. opilio fishery, now being freed up to process groundfish. In the first two years of the rationalization program, four and three processors participated in the North region, respectively, while four and six processors participated in the South region, respectively. This participation is a substantial decline from the 15 to 20 processors that participated in the years immediately preceding implementation of the program. Given this level of consolidation under [the Program], the potential for this action to contribute to further consolidation that has a perceptible effect on processors in other fisheries, is very limited.

The analysis clearly indicates that although the Program resulted in some consolidation in the crab fishery, the potential that this action would encourage a redistribution of excess processing capacity to the Aleutian Islands Pacific cod fishery is not likely. The Fisheries Impact Statement adequately addresses the requirements of section 303(a)(9) of the MSA, specifically the ''likely effects'' of the action, including a discussion noting that the specific concerns raised by the commenter are not likely to occur.

NMFS is adding some clarification to section 2.4.7 to note that in response to concerns raised by processing representatives (including the commenter) subsequent to implementation of the Program, the Council has initiated an examination of alternatives to impose limits on processing of groundfish harvested from the Aleutian Islands by floating

processors whose processing history led to an allocation under the Program. That action is intended to address possible inequities to historic groundfish processors that might arise from the potential that additional processing capacity could have been made available by the implementation of the Program and that additional capacity could increase processing effort in the groundfish fisheries. However, the conclusions contained in section 2.4.7 clearly note that the potential effects of Amendment 27 and the accompanying regulations are not likely to have an adverse effect on existing processing operations.

Although it is possible that the implementation of the Program may have reduced the need for processing capacity for BSAI crab fisheries, and some of that processing capacity could be redirected for processing Pacific cod, there is no information to suggest that Amendment 27 and its accompanying regulations would measurably increase the amount of processing capacity that may be used to process Pacific cod in the Aleutian Islands beyond that which may have already occurred with the implementation of the Program. Section 2.4 of the analysis notes that currently there is likely to be excess processing capacity that may be used in a variety of fisheries, including the Aleutian Islands Pacific cod fishery. Modifying the method for calculating the IPQ use cap is not expected to substantially increase processing capacity available for use in the Aleutian Islands Pacific cod fishery.

Comment 2: The Council acknowledged and then ignored the foreseeable impacts of this action on Aleutian Islands Pacific cod processing in Adak. The commenter provides an example of the operations of a specific floating processor involved in both Aleutian Islands Pacific cod and the snow crab fishery in 2008 and appears to suggest that this final rule would encourage this vessel to process Aleutian Islands Pacific cod instead of snow crab in a manner that would be disadvantageous to the specific processing operations in Adak. The commenter notes that additional mitigation measures, presumably to address the fishing operations of this floating processor, should be considered. The commenter notes that the Council is currently considering an action that would limit the amount of Aleutian Islands Pacific cod that could be received and processed by vessels that participate in LAPPs. The commenter provides a description of Council deliberations related to Aleutian Islands Pacific cod processing. In particular, the commenter notes that in the transcript of Council deliberations, NOAA General Counsel had raised concerns about the nature of discussions and whether the Council had fully considered the impacts of its action.

Response: NMFS reviewed the record developed by the Council for this action and determined that the Council did not ignore the foreseeable impact of this action on Aleutian Islands Pacific cod processing. The analysis prepared for this action analyzed the effects of this action and its likely effects on participants in various fisheries. Specifically, sections 2.3, 2.4, and 3.7 of the analysis contain an extensive description of the likely effects of this action on harvesters, processors, communities, and participants in other fisheries.

The reference the commenter makes to a specific floating processor and how this action would affect that vessel's operations appears speculative. The analysis generally examined changes in processing operations that might occur from this action but cannot reasonably predict or analyze the actions of specific vessel's operations due to the wide variety of factors that will affect their operations. There is no reason to assume that a specific vessel operator will choose to process Aleutian Islands Pacific cod differently due to this action. However, the information the commenter presents in the comment indicates that the vessel of concern is already actively processing in the Aleutian Islands Pacific cod fishery, in which case, this action would not be expected to have any additional impact on processing by this vessel in the Aleutian Islands Pacific cod fishery.

During deliberations, Council members explored the potential impact of this action on other fisheries. After a consideration of the potential impacts of this action, the Council chose to proceed with this action. In addition, the Council chose to initiate a review of the potential impacts of limited access privilege programs (LAPPs), including the Program, the AFA, and the Amendment 80 Program on processing capacity and the potential effects of those LAPPs on processing operations in various communities. The Council concluded that this action did not have a demonstrable likely impact on processing consolidation that would adversely affect other participants, but did choose to explore the impacts of LAPPs generally under a separate action. Based on the deliberations and a review of the analysis, NMFS agrees with the Council's conclusions. It should be noted that the commenter's description of comments made by NOAA General Counsel is not complete. NOAA General Counsel raised concerns in an effort to help focus the Council's deliberations. Unfortunately, those deliberations are not available because the discussion among NOAA General Counsel and Council members was not recorded in its entirety.

Comment 3: The IRFA improperly concludes that this action would be expected to benefit the directly regulated entities. Adak Fisheries would be harmed because under this action an IPQ holder will have less incentive to custom process in Adak, and this action would provide an incentive for a person to bring a floating processor into the Aleutians to process crab and Pacific cod which would reduce the potential product delivered to Adak. These issues have not been adequately addressed in the IRFA. Specific requirements that allow custom processing by floating processors in the Aleutian Islands undermine the goals of the Council to sustain communities in the Aleutian Islands. Allowing floating processors minimizes the potential benefits that may be received by shoreside processing operations.

Response: NMFS disagrees. The commenter's assertions about the effects of this final rule on directly regulated entities must be considered separately from the rule's effects on other indirectly regulated entities, such as the communities of Adak or Atka, or processing facilities. The IRFA and FRFA conclude that directly regulated entities are the PQS and IPQ holders who would be allowed to undertake custom processing with less constraint than they could prior to this rule. The PQS and IPQ holders are expected to benefit because the action would relieve a restriction on their ability to consolidate processing operations and may provide additional benefits relative to the status quo such as improved operations efficiency. The commenter does not provide any information to suggest that this conclusion is not true. The action would allow any directly regulated PQS or IPQ holder to establish custom processing relationships with any other PQS or IPQ holder within the limits established by this action. Specific to this comment, Adak Fisheries, or any other IPQ holder, could choose to have crab processed at any facility that is able to process those crab, including Adak, provided that facility is not otherwise ineligible to be used. The potential for a processing facility at Adak to use this provision is addressed in the analysis prepared for this action (see **ADDRESSES**).

The commenter asserts that the action would reduce the incentive for an IPQ holder to use the processing facility in Adak for custom processing, but provides no reason as to why this may be the case. Facilities in Adak, or any other community, could be used for custom processing. The only factors that would prevent operations from being consolidated in Adak would be those unrelated to this action (e.g., IPQ holders cannot reach agreement with the facility operators on terms to have their crab custom processed at that facility, the facility is unable to meet the processing requirements of the IPQ holders who wish to have their crab custom processed, or the facility is not economically viable for a given custom processing arrangement). As noted in the response to Comment 1, NMFS has concluded it is unlikely that this action will have an effect on processing activities in the Aleutian Islands Pacific cod fishery.

The commenter notes that one of the goals in the Council's purpose and need statement (i.e., problem statement) for this action is ''sustaining communities,'' but the commenter fails to consider the Council's purpose and need statement in its entirety. The Council considered alternatives that would ''protect the economic base of remote communities dependent on crab processing, and to allow for the efficient prosecution of quota held by fishermen.'' Specifically, the Council considered alternatives that would allow Adak and Atka to benefit from more efficient prosecution of crab fisheries by the exemption of custom processing arrangements from IPQ use caps. The Council noted that given the limited shoreside processing facilities available in Aleutian Island communities other than Adak, allowing floating processors to operate in the Aleutian Islands under specific conditions would help to protect the economic base of Atka by allowing floating operators to operate there, while ensuring that processing operations in Adak may continue. Section 2.3.13 of the analysis notes that Adak has the only shoreside processing facilities in the Central and Western Aleutian Islands, and section 2.4.3 notes that the onshore processing facility ''at Adak could be provided a substantial advantage relative to other processors, if only shore plants are qualified for the [custom processing] exemption.'' Because the goal of this action is to protect the economic base of all communities, not only Adak, and is to allow efficient prosecution of quota, the Council considered, and ultimately selected options to allow floating processors to operate in the Aleutian Islands as a way to accomplish these two goals. A review of the factors the Council considered is provided in the preamble to the proposed rule, section 2.4 of the analysis prepared for this action, and records of Council deliberation.

Comment 4: The confidentiality standards applied to data used in the analysis compromised the Council's decision making. Much of the WAG fishery harvested by catcher vessels has been processed by facilities in Adak since 1999. The commenter raises concerns about confidentiality standards applied both in the EIS prepared for the Program and the analysis conducted for this action. The commenter asserts that applying data confidentiality standards to catch data from LAPPs is a bad policy.

Response: Due to the limited number of participants in the WAG fishery, the Council and NMFS are unable to release information in the analysis concerning processing in specific locations because doing so would reveal confidential information. Section 402(b)(3) of the MSA allows NMFS to ''release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity of any person who submits such information.'' Similarly, data from State of Alaska fish tickets are considered confidential and may not be released by the State, NMFS, or the Council under the requirements of State of Alaska statute except in an aggregate form that would not reveal data from an individual submitter (Alaska Statute, sec.16.05.815). However, the Council was generally aware of the overall patterns of harvesting and processing in the WAG fishery and the participants in that fishery through public testimony and the limited data available in the analysis. Constraints on the release of confidential information did not affect the ability of the Council or NMFS from adequately considering the effects of its actions. Public comment from the commenter to the Council and NMFS noted the historic and current processing activities of WAG crab at the facilities of Adak.

Comment 5: The commenter asserts that this action would undermine existing investments in shoreside processing facilities in Adak. The commenter notes that the current dependence of Adak on crab is compromised by the ability of persons to use a stationary floating crab processor instead of a shoreside facility to custom process crab. The commenter states that section 303A(c)(5) of the MSA requires NMFS to consider ''current and historical'' participation by fishing communities.

Response: The Council and NMFS considered current and historic participation of Adak, and other fishing communities in the development and approval of this action. Additional detail on the fishing communities and their current and historic participation in the fishery is provided in section 2.4 of the analysis.

While NMFS agrees with the commenter that section 303A(c)(5) requires NMFS to consider that current and historical participation of fishing communities during the development of a new LAPP, this action modifies an existing LAPP and under section 303A(i), the requirements of section 303A(c)(5) are inapplicable to this action. However, pursuant to other provisions of the MSA, NMFS has determined that this action would not undermine the ability for crab to be custom processed in Adak relative to other locations in the Aleutian Islands. The decision by an IPQ holder to process catch in Adak, or at any other location, will be based on a wide array of factors such as the potential costs of any custom processing fees, throughput of the facility, the ability of the facility mangers to meet the demands of the custom processors, and other economic factors. Allowing custom processing to occur at both stationary floating processors and shoreside facilities provides competition among processors and addresses concerns raised by the Council that limiting processing to shoreside facilities in the Aleutian Islands could limit competition. Sections 2.3.13 and 2.4.3 of the analysis and the response to Comment 2 provide additional rationale for allowing stationary floating processors and shoreside facilities to custom process crab in the Aleutian Islands.

Comment 6: The analysis does not clarify that PQS holders would be the primary beneficiaries of this action. Facility operators who choose to custom process catch will not benefit from this action.

Response: NMFS disagrees with the characterization of the analysis. The analysis, particularly sections 2.4 and 3.7, describe the potential effects of the action on harvesters, processing facility operators, PQS and IPQ holders, and communities. Section 2.4 of the analysis describes the potential benefits that PQS holders would receive from this action. However, the analysis also describes potential benefits from this action for facility operators, IPQ holders who may or may not be PQS holders, harvesters, and communities. The analysis contains a comprehensive discussion of the

effects of this action and the potential beneficiaries.

Comment 7: The alternatives considered do not adequately address the Council's purpose and need statement for the action. Specifically, the action does not contribute to community stability or provide for efficient prosecution of the fishery. The commenter asserts that 75 percent of the west region designated Western Aleutian Islands golden king crab (WAG) Class A IFQ was not harvested due to additional custom processing fees that made the operations uneconomic. The commenter asserts that PQS and IPQ for west designated WAG crab should be extinguished but that regional delivery requirements should be retained.

Response: The Council considered a range of alternatives that would address the purpose and need statement and NMFS determined that the range of alternatives considered by the Council addressed the purpose and need statement for this action. The analysis examines the impacts of the exemption on community stability and effects on processors in section 2 of the document (see **ADDRESSES**). The commenter does not provide any specific examples that describe how the proposed action failed to address the Council's purpose and need statement. Without additional detail, NMFS is unaware of any information omitted from the analysis. The commenter incorrectly states that 75 percent of the west designated WAG Class A IFQ has been unharvested. A review of NMFS landing data from the first three years of the Program indicates that in only one year (2006/2007) was a substantial portion of the west designated WAG Class A IFQ unharvested. NMFS cannot provide a more precise description of the use of west designated WAG Class A IFQ due to limitations on the release of potentially confidential fishery data. Furthermore, NMFS has no information to conclude that the WAG Class A IFQ that was left unharvested was due to additional custom processing fees. Finally, the commenter's statements about eliminating PQS and IPQ for west designated WAG crab are noted, but are not relevant to the purpose of this action which is to modify IPQ use cap calculation procedures to provide greater opportunities for more efficient custom processing operations.

Comment 8: The commenter supports the proposed action and notes that the ability for processors to consolidate processing in the north region *C. opilio* fishery will benefit the community of Saint Paul, Alaska. The commenter describes the relationships among various processing companies and local government entities, and notes that economically efficient crab processing operations are necessary to benefit the community.

Response: NMFS notes the support for the rule and the importance of crab processing to Saint Paul.

Comment 9: The commenter provides some detailed information about the business arrangements that exist among various local government agencies and companies involved in crab processing in Saint Paul. The commenter notes that the text of section 2.4.2 of the analysis states that ''a plant could be owned and operated by two distinct [IPQ] share holders, with each [IPQ] share holder credited with only its own [IPQ] share holdings for purposes of applying the cap.'' While the preamble to the proposed rule states that ''[a] person who holds IPQ and who owns a processing facility would be credited with only the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps.'' The commenter asks if these two statements are consistent, and whether the specific processing operations described by the commenter would be permitted.

Response: NMFS cannot comment on whether the specific business arrangements described by the commenter would be subject to the custom processing use cap exemption due to incomplete knowledge about the specific conditions that may exist among the parties in question. However, the statements made in section 2.4.2 and the preamble to the proposed rule are not inconsistent. In cases where an IPQ holder is not affiliated with another IPQ holder then those two separate and distinct IPQ holders may process their IPQ crab at the same crab processing facility, provided they are otherwise eligible to receive the exemption. The preamble to the proposed rule notes that ''affiliation'' is defined in regulation at 50 CFR 680.2. Provided an IPQ holder is not defined as affiliated with another IPQ holder, then it is possible that two IPQ holders could own a portion of a crab processing facility, not be considered affiliated according to 50 CFR 680.2, and process their IPQ at that commonly owned facility. In that case, each IPQ holder would be considered to use only the amount of IPQ that it processed at the facility and only that IPQ would be credited against that person's IPQ use cap.

Comment 10: The commenter supports the definition of the specific processing facilities at which the custom processing exemption would apply, and notes that it is consistent with section 122(e) of the MSA.

Response: NMFS notes the comment and agrees that the final rule is consistent with section 122(e) of the MSA.

Comment 11: The commenter supports applying an exemption to the IPQ use cap calculations for PQS that is, or was, subject to a ROFR.

Response: NMFS notes the comment.

Comment 12: The commenter raises general concerns about fisheries management asserting that fishery policies have been overly liberal and have not been to the benefit of American citizens. The commenter asserts that NMFS is biased and should not be allowed to manage fisheries.

Response: The comments are not specifically related to the proposed rule and recommend broad changes to fisheries management that are outside of the scope of this action.

Changes from the Proposed Rule

NMFS did not make any changes from the proposed rule.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that Amendment 27 is necessary for the conservation and management of the BSAI crab fisheries and that it is consistent with the MSA and other applicable laws.

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

Final Regulatory Flexibility Analysis (FRFA)

A FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows.

Why Action by the Agency is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA provides the legal basis for the rule, as discussed in this preamble. The objectives of the rule are to (1) implement the statutory

requirements of section 122(e) of the MSRA, modify IPQ use caps apply to a person who is processing IPQ crab through contractual arrangements with the facility owners to provide greater flexibility in processing operations, and (3) modify IPQ use caps that limit the amount of IPQ that may be used at a facility by persons processing Eastern Aleutian Islands golden king crab and Western Aleutian Islands red king crab.

Number of Small Entities to Which the Final Rule Would Apply

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future.

The FRFA contains a description and estimate of the number of small entities to which the rule would apply. Currently, 29 processors hold processing shares. Estimates of large entities were made, based on available records of employment information on participation in processing activities in other fisheries, and analysts' knowledge of foreign ownership of vertically integrated processing companies. Of the recipients of PQS, 11 are estimated to be large entities, leaving 18 small entities among the directly regulated universe under consideration.

Public Comments Received on the IRFA

NMFS received one public comment on the IRFA or on the economic impacts of the rule. That comment is addressed in the Response to Comment section of this preamble (see response to Comment 3) and the FRFA prepared for this action (see **ADDRESSES**).

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule would not change existing reporting, recordkeeping, or other compliance requirements.

Comparison of Alternatives

All the directly regulated individuals would be expected to benefit from the preferred alternative, Alternative 2 (described in this rule) relative to the status quo alternative because it relieves individuals from requirements that limit their ability to consolidate processing operations that may provide additional benefits relative to the status quo. Of the two alternatives considered, status quo and this action, this action minimizes adverse economic impacts on the individuals that are directly regulated.

Although the alternatives under consideration in this action would have distributional and efficiency impacts for directly regulated small entities, in no case are these combined impacts expected to be substantial. The status quo alternative would not allow the additional processing efficiencies that were the motivation for the action. However, exempting processors from use caps under custom processing arrangements would provide additional processing opportunities for small entities that wish to reduce costs by consolidating operations with other processors. Although neither of the alternatives is expected to have any significant economic or socioeconomic impacts, the preferred Alternative 2 minimizes the potential negative impacts that could arise under Alternative 1, the status quo alternative.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on its website at *http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

List of Subjects in 50 CFR Part 680

Alaska, Fisheries.

Dated: May 21, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.7, paragraphs (a)(7) and (a)(8) are revised, and paragraph (a)(9) is added to read as follows:

§ 680.7 Prohibitions.

* * * * *

(a) * * *

(7) For an IPQ holder to use more IPQ crab than the maximum amount of IPQ that may be held by that person. Use of IPQ includes all IPQ held by that person, and all IPQ crab that are received by any RCR at any shoreside crab processor or stationary floating crab processor in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest unless that IPQ crab meets the requirements described in § 680.42(b)(7).

(8) For a shoreside crab processor or stationary floating crab processor that does not have at least one owner with a 10 percent or greater direct or indirect ownership interest who also holds IPQ in that crab QS fishery, to be used to receive in excess of 30 percent of the IPQ issued for that crab fishery unless that IPQ crab meets the requirements described in § 680.42(b)(7).

(9) For any shoreside crab processor or stationary floating crab processor east of 174 degrees west longitude to process more than 60 percent of the IPQ issued in the EAG or WAI crab QS fisheries.

* * * * *

■ 3. In § 680.42, paragraph (b)(2) is revised, and paragraph (b)(7) is added to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ and IPQ.

* * * * *

(b) * * *

(2) A person may not use more than 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year except that a person who:

(i) Holds IPQ; and

(ii) Has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary

floating crab processor where that IPQ crab is processed will not be considered to use any IPQ in the BSS crab QS fishery with a North region designation if that IPQ meets the requirements described in paragraph (b)(7) of this section.

* * * * *

(7) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed under § 680.7(a)(7) or paragraph (a)(8) of this section if:

(i) That RCR is not affiliated with an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed; and

(ii) The following conditions apply:

(A) The IPQ crab is:

(*1*) BSS IPQ crab with a North region designation;

(*2*) EAG IPQ crab;

(*3*) PIK IPQ crab;

(*4*) SMB IPQ crab;

(*5*) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude; or

(*6*) WAI IPQ crab; and

(B) That IPQ crab is processed at:

(*1*) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of this rule; or

(*2*) Any stationary floating crab processor that is:

(*i*) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of this rule;

(*ii*) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(*iii*) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on the effective date of this rule in which case that stationary floating crab processor is not required to be located within a harbor; or

(C) The IPQ crab is:

(*1*) Derived from PQS that is, or was, subject to a ROFR as that term is defined at § 680.2;

(*2*) Derived from PQS that has been transferred from the initial recipient of those PQS to another person under the requirements described at § 680.41;

(*3*) Received by an RCR who is not the initial recipient of those PQS; and

(*4*) Received by an RCR within the boundaries of the ECC for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.

* * * * *

[FR Doc. E9–12430 Filed 5–27–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 101
Thursday, May 28, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0225; Airspace Docket No. 09–ANM–4]

Proposed Establishment of Class E Airspace; Plentywood, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Plentywood Sher-Wood Airport, Plentywood, MT. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Plentywood Sher-Wood Airport, Plentywood, MT. The FAA is proposing this action to enhance the safety and management of aircraft operations at Plentywood Sher-Wood Airport, Plentywood, MT.

DATES: Comments must be received on or before July 13, 2009.

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–2009–0225; Airspace Docket No. 09–ANM–4, 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 2009–0225 and Airspace Docket No. 09–ANM–4) 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–2009–0225 and Airspace Docket No. 09–ANM–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 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 Area, 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 establishing Class E airspace at Plentywood Sher-Wood Airport, Plentywood, MT. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Plentywood Sher-Wood Airport, Plentywood, MT. This action would enhance the safety and management of aircraft operations at Plentywood Sher-Wood Airport, Plentywood, MT.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, 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 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. 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 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 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 Plentywood Sher-Wood Airport, Plentywood, MT.

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 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT, E5 Plentywood, MT [New]

Plentywood Sher-Wood Airport, MT
(Lat. 48°47′19″ N., long. 104°31′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Plentywood Sher-Wood Airport; and that airspace extending upward from 1,200 feet above the surface of the earth bounded by a line beginning at lat. 49°00′00″ N., long. 105°02′00″ W.; to lat. 49°00′00″ N., long. 104°02′00″ W.; to lat. 48°32′35″ N., long. 104°02′00″ W.; to lat. 48°27′00″ N., long. 104°11′12″ W.; to lat. 48°40′00″ N., long. 105°02′00″ W.; thence to the point of origin.

* * * * *

Issued in Seattle, Washington, on May 11, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–12409 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0763; Airspace Docket No. 08–AAL–22]

Proposed Establishment of Class E Airspace; Quinhagak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Quinhagak, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Quinhagak Airport at Quinhagak, AK. Additionally, one textual Obstacle Departure Procedure (ODP) is being developed. Adoption of this proposal would result in creating Class E airspace upward from 700 feet (ft.) above the surface at the Quinhagak Airport, Quinhagak, AK.

DATES: Comments must be received on or before July 13, 2009.

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–2008–0763/ Airspace Docket No. 08–AAL–22, 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–2008–0763/Airspace Docket No. 08–AAL–22.'' 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 Notice of Proposed Rulemakings (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* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html*.

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 NPRM's 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 the Code of Federal Regulations (14 CFR Part 71), which would establish Class E airspace at the Quinhagak Airport, in Quinhagak, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Quinhagak Airport, Quinhagak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has created two new SIAPs for the Quinhagak Airport and one textual ODP. The SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 12, Original and (2) the RNAV (GPS) RWY 30, Original. Textual ODPs are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. above the surface in the Quinhagak Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Quinhagak Airport, Quinhagak, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class 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. 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 create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Quinhagak Airport, 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; AIRWAYS; 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 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, 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 Quinhagak, AK [New]

Quinhagak, Quinhagak Airport, AK
(Lat. 59°45′19″ N., long. 161°50′43″ W.).

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Quinhagak Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 19, 2009.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–12408 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–13–000]

Transmission Relay Loadability Reliability Standard

May 21, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission proposes to approve Reliability Standard PRC–023–1 (Transmission Relay Loadability Reliability Standard) developed by the North American Electric Reliability Corporation. The proposed Reliability Standard requires certain transmission owners, generator owners, and distribution providers to set protective relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from all fault conditions, but do not limit transmission loadability or interfere with system operators' ability to protect system reliability. While all relays detect and protect the electric network from fault conditions, the proposed Reliability Standard applies only to load-responsive phase protection relays. In addition, pursuant to section 215(d)(5) of the Federal Power Act, the Commission proposes to direct NERC to develop modifications to the proposed Reliability Standard to address specific concerns identified by the Commission.

DATES: Comments are due July 27, 2009.

ADDRESSES: Interested persons may submit comments, identified by Docket

No. RM08–13–000, by any of the following methods:

• *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery.* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Joshua Konecni (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6291.

Michael Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

Cynthia Pointer (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6069.

Robert Snow (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6716.

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1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) proposes to approve Reliability Standard PRC–023–1 (Transmission Relay Loadability Reliability Standard), developed by the North American Electric Reliability Corporation (NERC) in its capacity as the Electric Reliability Organization (ERO).[2] The proposed Reliability Standard requires certain transmission owners, generator owners, and distribution providers to set protective relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network

[1] 16 U.S.C. 824o.

[2] Section 215(e)(3) of the FPA directs the Commission to certify an ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. 16 U.S.C. 824o(e)(3). Following a selection process, the Commission selected and certified NERC as the ERO. *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (ERO Rehearing Order) (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* No. 06–1426, 2009 U.S. App. LEXIS 9905 (D.C. Cir. May 8, 2009).

from all fault conditions, but do not limit transmission loadability [3] or interfere with system operators' ability to protect system reliability.[4] In addition, pursuant to section 215(d)(5) of the FPA,[5] the Commission proposes to direct the ERO to develop modifications to the proposed Reliability Standard to address specific concerns identified by the Commission.

I. Background

A. Protective Relays

2. Protection systems are used to detect, operate, and initiate the removal of faults on an electric system.[6] Some protection systems use redundancy, measurements, and telecommunications facilities to accurately identify and confirm the location of a fault; [7] others use a single system that relies only on local information.[8]

3. Protective relays, also known as primary relays, are one type of equipment used in protection systems.[9] Protective relays read electrical measurements (such as current, voltage, and frequency) and remove from service any system element that suffers a fault and threatens to damage equipment or interfere with effective operation of the system.[10] Protective relays are applied to protect specific system elements and are set to recognize certain electrical measurements as indicating a fault. When a protective relay detects a fault, it sends a signal to an interrupting device (such as a circuit breaker) [11] to disconnect the element or elements from the rest of the system.

4. The sequence in which protective relays operate is important. For example, on a transmission line, coordination of protection through distance settings and time delays ensures that the relay closest to a fault can operate before a relay farther away from the fault.[12] If the more distant relay operates first, it will disconnect both the transmission equipment necessary to remove the fault and ''healthy'' equipment that should remain in service.

5. Impedance relays are the most common type of relays used to protect transmission lines. Impedance relays continuously measure local voltage and current on the protected transmission line and operate when the measured magnitude and phase of the impedance (voltage/current) falls within the settings or reach of the relay.[13] Impedance relays can also provide backup protection and protection against remote circuit breaker failure.

6. Multiple impedance relays are installed at each end of the transmission line [14] with each typically used to protect a certain percentage, or zone, of the local transmission line and remote lines. The purpose of zonal protection is to protect each part of the local and remote transmission lines (i.e., no ''gaps'') and to disconnect only the equipment necessary to remove a fault even if the closest protection system does not operate as desired. Impedance relays may be set to cover one, two, or three protection zones (zone 1, zone 2, and zone 3 respectively), with appropriate time delays to achieve coordination of protection.

7. Zone 1 relays are typically set to reach 80 percent of the protected transmission line. They leave a 20 percent margin at the far end of the line to avoid operating for faults for which they are not intended to operate, such as for faults on an adjacent line.[15] Zone 1 relays provide fast primary protection and so are set to operate without an intentional time delay.

8. Zone 2 relays provide backup protection and are typically set to reach 125 percent of the protected transmission line, i.e., 100 percent of the protected transmission line and 25 percent of the adjacent transmission line (i.e., they have a 25 percent margin). Because zone 2 relays can operate for faults on both the protected transmission line and on parts of adjacent transmission lines connected to the remote terminal,[16] they are set with a time delay to allow for coordination of protection with the zone 1 relay on the faulted line. This time delay is determined or verified through system planning analysis.[17]

9. Zone 3 relays provide remote circuit breaker failure and backup protection (i.e., when the remote circuit breaker fails to open to remove a fault) for remote distance faults on a transmission line; they amount to a backup of the zone 2 backup.[18] Zone 3 relays and zone 2 relays set to operate like zone 3 relays (zone 3/zone 2 relays) are typically set to reach 100 percent of the protected transmission line with a margin of more than 100 percent of the longest line (including any series elements such as transformers) that emanates from the remote buses. To ensure coordination of protection, zone

[3] In the context of the proposed Reliability Standard, ''loadability'' refers to the ability of protective relays to refrain from operating under load conditions.

[4] The Commission is not proposing any new or modified text to its regulations. Rather, as provided in 18 CFR part 40, a proposed Reliability Standard will not become effective until approved by the Commission, and the ERO must post on its website each effective Reliability Standard.

[5] 16 U.S.C. 824(d)(5).

[6] A ''fault'' is defined in the NERC Glossary of Terms used in Reliability Standards as, ''[a]n event occurring on an electric system such as a short circuit, a broken wire, or an intermittent connection.''

[7] ''Redundancy'' means that the primary component has a ''twin'' component that operates to isolate the fault in the same manner at approximately the same time. The transmission planner may assume that, at any given time, either the primary component or its redundant component will be operable and therefore the system will clear the contingency in the time associated with the primary protection.

[8] ''Local information'' refers to system measurements obtained at the immediate location of the protective relay. Achieving protection coordination and performance are required in the present Reliability Standards. Special protection systems and redundancy are not required as long as the applied system can achieve the desired performance.

[9] By definition, protection systems include protective relays, associated communication systems, voltage and current sensing devices, station batteries, and DC control circuitry. *See* NERC Glossary of Terms Used in Reliability Standards.

[10] There are two generic types of protective relays: those that have fixed characteristics (i.e., those that are used similar to a control switch, such as lockout relays) and those whose characteristic can be set to vary (i.e., those that are used to detect faults). The proposed Reliability Standard is applicable to the latter type of protective relay.

[11] A ''circuit breaker'' is a power operated switch capable of interrupting current (*e.g.*, load, fault, etc.) that is within its rating.

[12] ''Coordination of protection'' is defined by the Institute of Electrical and Electronics Engineers (IEEE) Std. C37.113–1999, ''IEEE Guide for Protective Relay Applications to Transmission Lines'' as ''[t]he process of choosing settings or time delay characteristics of protective devices, such that operation of the devices will occur in a specified order to minimize customer service interruption and power system isolation due to a power system disturbance.''

[13] The ''reach'' of the relay refers to the length of the transmission line for which the relay is set to protect and is generally used in reference to impedance relays. Proposed Reliability Standard PRC–023–1 establishes criteria to be used for setting phase impedance, as well as, overcurrent relays dependent on the system configuration where the relay is applied. The system configurations are described in sub-Requirements R1.1 through R1.13. Further, as impedance relays, also known as distance relays, detect changes in currents (I*) and voltages (V*) to determine the apparent impedance (Z*) according to the relationship of $Z^* = V^*/I^*$ of the line, impedance are directionally sensitive. They are forward looking into the lines that they are protecting, i.e., they protect against faults in front of and not behind the relay's installed location.

[14] Impedance relays are installed at each end of a transmission line and protect it in the forward looking direction of the relay, i.e., the impedance relays at the opposite terminals of a line ''look'' toward each other to detect line faults that are within their respective reaches and directions.

[15] The margin takes into account measurement errors of the relay, imprecise line impedance used in the relay setting calculation, and changes in system conditions.

[16] For example, a zone 2 relay will operate if the impedance on the adjacent line and the impedance of the protected line fall within the relay's setting.

[17] System planning analysis would identify the performance, required by Table 1 of the Transmission Planning (TPL) Reliability Standards.

[18] James S. Thorp, Power Systems Engineering Research Center, The Protection System in Bulk Power Networks 5 (2003).

3/zone 2 relays are set with a longer time delay than zone 2 relays.

B. Protective Relays and the August 14, 2003 Blackout

10. On August 14, 2003, a blackout that began in Ohio affected significant portions of the Midwest and Northeast United States, and Ontario, Canada (2003 blackout). This blackout affected an area with an estimated 50 million people and 61,800 megawatts of electric load.[19] The subsequent investigation and report completed by the U.S.-Canada Power System Outage Task Force (Task Force) concluded that a substantial number of lines disconnected when backup distance and phase relays operated under non-fault conditions. The Task Force determined that the unnecessary operation of these relays contributed to cascading outages at the start of the blackout and accelerated the geographic spread of the cascade.[20] Seeking to prevent or minimize the scope of future blackouts, both the Task Force and NERC made recommendations to ensure that protective relays do not contribute to future blackouts.

C. Task Force Final Blackout Report

11. The Task Force determined that one of the principal reasons why cascading outages spread beyond Ohio was the operation of zone 3/zone 2 relays in response to overloads rather than true faults.[21] The Task Force identified fourteen 345 kV and 138 kV transmission lines that disconnected because of zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection. Among these relays were several zone 2 relays in Michigan that were set to overreach their protected lines by more than 200 percent without any intentional time delay.[22] The Task Force stated that although these and the other relays operated according to their settings, they operated so quickly that they impeded the natural ability of the electric system to hold together and did not allow time for operators to try to stop the cascade.[23] The Task Force described the unnecessary operation of these relays as the ''common mode of failure that accelerated the geographic spread of the cascade.'' [24] The Task Force also indicated that as the cascade progressed beyond Ohio it spread because of dynamic power swings and the resulting instability.[25]

D. NERC and Task Force Recommendations

12. NERC conducted its own investigation into the 2003 blackout and developed recommendations to prevent and mitigate future cascades. Recommendation 8A of the NERC Report addresses the need to evaluate zone 3 relays to determine whether they will operate under extreme emergency conditions:

> All transmission owners shall, no later than September 30, 2004, evaluate the zone 3 relay settings on all transmission lines operating at 230 kV and above for the purpose of verifying that each zone 3 relay is not set to trip on load under extreme emergency conditions[]. In each case that a zone 3 relay is set so as to trip on load under extreme conditions, the transmission operator shall reset, upgrade, replace, or otherwise mitigate the overreach of those relays as soon as possible and on a priority basis, but no later than December 31, 2005. Upon completing analysis of its application of zone 3 relays, each transmission owner may no later than December 31, 2004 submit justification to NERC for applying zone 3 relays outside of these recommended parameters. The Planning Committee shall review such exceptions to ensure they do not increase the risk of widening a cascading failure of the power system.[26]

13. In Recommendation No. 21A of the Final Blackout Report, the Task Force recommended that NERC go further than it had proposed in its report:

> NERC [should] broaden the review [described in Recommendation 8A of the NERC Report] to include operationally significant 115 kV and 138 kV lines, e.g., lines that are part of monitored flowgates or interfaces. Transmission owners should also look for zone 2 relays set to operate like zone 3 [relays].[27]

14. NERC states that PRC–023–1 responds to these recommendations.

II. Proposed Reliability Standard PRC–023–1

15. Reliability Standard PRC–023–1 requires certain transmission owners, generator owners, and distribution providers to set certain protective relays according to specific criteria to ensure that they detect only faults for which they must operate and do not operate unnecessarily during non-fault load conditions. NERC proposes that PRC–023–1 apply to transmission owners, generator owners, and distribution providers with load-responsive phase protection systems as described in Attachment A to PRC–023–1, applied to: (1) All transmission lines and transformers with low-voltage terminals operated or connected at 200 kV and above; and (2) those transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV that are designated by planning coordinators as critical to the reliability of the bulk electric system. The proposed Reliability Standard also prescribes the settings that should be used when it is appropriate to use a 0.85 per unit voltage and a power factor angle of 30 degrees. NERC states that PRC–023–1 has a broader application than the recommendations in the NERC and Task Force final reports, which address only zone 3/zone 2 relays, because other load-responsive relays were found to have contributed to the 2003 blackout.

16. Under the proposed Reliability Standard, protective relay settings must provide essential facility protection for faults without preventing operation of the Bulk-Power System in accordance with established Facility Ratings.[28] If essential facility protection imposes a more constraining limit on the system, PRC–023–1 requires that the Facility Rating reflect that limit. Proposed Reliability Standard PRC–023–1 applies to any protective functions that could operate with or without time delay, on load current, including but not limited to: Phase distance, out-of-step tripping, switch-on-to-fault, overcurrent relays, and communication-aided protection applications. It also requires evaluation of out-of-step blocking schemes [29] to ensure that they do not operate for faults during specified loading conditions.[30]

17. The proposed Reliability Standard expressly excludes from its requirements: Relay elements enabled only when other relays or associated systems fail (e.g., overcurrent elements enabled only during abnormal system conditions or a loss of communications), protection relay systems intended for the detection of ground fault conditions or for protection during stable power swings, generator protective relays

[19] U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations, (April 2004) (Final Blackout Report), available at *http://www.ferc.gov/industries/electric/indus-act/blackout.asp.*

[20] *Id.* at 80.

[21] *Id.* at 73.

[22] *Id.* at 80.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 81.

[26] August 14, 2003 Blackout: NERC Actions to Prevent and Mitigate the Impacts of Future Cascading Blackouts 13 (2004) (NERC Report).

[27] Final Blackout Report at 158.

[28] As defined in NERC's Glossary of Terms Used in Reliability Standards.

[29] ''Out-of-step blocking'' refers to a protection system that is capable distinguishing between a fault and a power swing. If a power swing is detected, the protection system, ''blocks,'' or prevents the tripping of its associated transmission facilities.

[30] *See* PRC–023–1 Attachment A, Item 1.

susceptible to load, relay elements used only for special protection systems applied and approved in accordance with NERC Reliability Standards PRC–012 through PRC–017,[31] protection relay systems designed to respond only in time periods that allow operators 15 minutes or longer to respond to overload conditions, thermal emulation relays used in conjunction with dynamic Facility Ratings, relay elements associated with DC lines, and relay elements associated with DC converter transformers.

A. Requirements

18. Proposed Reliability Standard PRC–023–1 consists of three compliance requirements.[32] Requirements R1 and R2 apply to transmission owners, generator owners, and distribution providers with transmission lines or transformers with low-voltage terminals connected at 200 kV and above. Requirement R3 requires planning coordinators to identify the facilities operated between 100 kV and 200 kV that are critical to the reliability of the bulk electric system, and therefore subject to Requirement R1.

1. Requirement R1

19. Requirement R1 states that each transmission owner, generator owner, and distribution provider subject to the proposed Reliability Standard shall use one of the criteria prescribed in sub-Requirements R1.1 through R1.13 for any specific circuit terminal to prevent its phase protective relay settings from limiting transmission system loadability while maintaining reliable protection of the bulk electric system for all fault conditions.[33]

20. Sub-Requirements R1.1 through R1.13 prescribe specific criteria to be used for certain transmission system configurations. These criteria account for the presence of devices such as series capacitors and address circuit and transformer thermal capability. NERC states that the criteria set forth in the sub-requirements reflect the maximum circuit loading for various system configurations and allow the protective relays subject to the proposed Reliability Standard to be set for optimum protection while carrying that load. NERC claims that each criterion balances the need to protect the system with the optimization of load carrying capability.

21. Sub-Requirement R1.1 specifies transmission line relay settings based on the highest seasonal Facility Rating using the 4-hour thermal rating of a transmission line, plus a design margin of 150 percent. Sub-Requirement R1.2 allows transmission line relays to be set so that they do not operate at or below 115 percent of the highest seasonal 15-minute Facility Rating of a circuit, when a 15-minute rating has been calculated and published for use in real-time operations. Sub-Requirement R1.3 allows transmission line relays to be set so that they do not operate at or below 115 percent of the maximum theoretical power capability.[34] Sub-Requirement R1.4 may be applied where series capacitors are used on long transmission lines to increase power transfer.[35] Sub-Requirement R1.5 applies in cases where the maximum end-of-line three-phase fault current is small relative to the thermal loadability of the conductor.[36] Sub-Requirement R1.6 may be used for system configurations where generation is remote from load busses or main transmission busses. Under these conditions, protective relays must be set so that they do not operate at or below 230 percent of the aggregated generation nameplate capability in the remote area.

22. NERC states that Sub-Requirement R1.7 is appropriate for system configurations that have load centers that are remote from the generation center. The protective relays at the load center terminal must be set such that they operate only above 115 percent of the maximum current flow from the load to generation source under any system configuration. Sub-Requirement R1.8 applies to system configurations that have one or more transmission lines connecting a remote, net importing load center to the rest of the system. Under these conditions, the protective relays at the bulk electric system end must be set so that they operate only above 115 percent of the maximum current flow to the load center under any system configuration. Similarly, sub-Requirement R1.9 applies to the load end and requires protective relays to be set so that they operate only above 115 percent of the maximum current flow to the bulk electric system under any system configuration. Sub-Requirement R1.10 is specific to transmission transformer fault protective relays and transmission lines terminated only with a transformer.[37] Sub-Requirement R1.11 may be used when sub-Requirement R1.10 cannot be met.[38] Sub-Requirement R1.12 may be used when the circuits have three or more terminals. In these cases, line distance relays are still required to provide adequate protection for multi-terminal circuits, but their settings (required to be set at 125 percent of the apparent impedance with a maximum torque angle at 90 degrees or the highest supported by the relay manufacturer)[39] will limit the desired circuit loading capability. This limited circuit loading capability will become the Facility Rating of the circuit. Finally, sub-Requirement R1.13 is intended to apply when otherwise supportable situations and practical limitations are identified under sub-Requirements R1.1 through R1.12. In these situations, the phase protective relays must be set so that they operate above 115 percent of such identified limitations.

2. Requirement R2

23. Requirement R2 states that transmission owners, generator owners, and distribution providers that use a circuit with the protective relay settings determined by the practical limitations described in sub-Requirements R1.6

[31] The Commission has approved PRC–015–0, PRC–016–0, and PRC–017–0 and has not approved or remanded PRC–012–0, PRC–013–0, and PRC–014–0.

[32] NERC has also filed a document entitled: ''PRC–023 Reference—Determination and Application of Practical Relaying Loadability Ratings.'' NERC states that this document explains the rationale behind the requirements in the proposed Reliability Standard and provides the calculation methodology to help entities comply. NERC states that the reference document is presented for information only and does not request that the Commission take action on it.

[33] Requirement R1 also requires each transmission owner, generator owner, and distribution provider to evaluate relay loadability at 0.85 per unit voltage and a power factor angle of 30 degrees.

[34] The power transfer calculation may be performed by using either an infinite source with a 1.00 per unit bus voltage at each end of the transmission line or an impedance at each end of the line, which reflects the actual system source impedance with a 1.05 per unit voltage behind each source impedance.

[35] Special consideration must be made in computing the maximum power flow that protective relays must accommodate on series-compensated transmission lines, the greater of 115 percent of the highest emergency rating of the series capacitor or 115 percent of the maximum power transfer on the circuit calculated according to sub-Requirement R1.3.

[36] Such cases exist due to some combination of weak sources, long lines, and the topology of the transmission system.

[37] The protective relays must be set so that they operate only above the greater of (i) 150 percent of maximum transformer nameplate rating, and (ii) 115 percent of the highest operator established emergency transformer rating.

[38] In these cases additional considerations are specified to limit unnecessary operation due to load according to one of the following: (i) Set the relays to allow transformer overload operation at higher than 150 percent of the maximum applicable rating, or 115 percent of the highest operator established emergency transformer rating whichever is greater, and allows at least 15 minutes for the operator to take controlled action to relieve the overload, and (ii) install supervision for the relays using either a top oil (setting no less than 100 degrees Celsius) or simulated winding hot spot temperature elements (setting no less than 140 degrees Celsius).

[39] Relay loadability must be evaluated at the relay trip point at 0.85 per unit voltage and a power factor angle of 30 degrees.

through R1.9, R1.12, or R1.13 must use the calculated circuit capability as the circuit's Facility Rating and must obtain the agreement of the planning coordinator, transmission operator, and reliability coordinator with the calculated circuit capability.

3. Requirement R3

24. Requirement R3 requires planning coordinators to designate which transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV are critical to the reliability of the bulk electric system (because they prevent a cascade) and therefore subject to Requirement R1.[40] Sub-Requirements R3.1 and R3.1.1 specify that planning coordinators must identify these facilities through a process that considers input from adjoining planning coordinators and affected reliability coordinators. Sub-Requirements R3.2 and R3.3 require planning coordinators to maintain a list of these facilities and provide it to reliability coordinators, transmission owners, generator owners, and distribution providers within 30 days of its initial establishment, and within 30 days of any subsequent change.

B. Interactions With Other Standards

25. NERC states that proposed Reliability Standard PRC–023–1 interacts with several existing Reliability Standards, including: FAC–008–1,[41] FAC–009–1,[42] IRO–002–1,[43] IRO–005–1,[44] and TOP–008–1.[45] NERC states that the interactions between these Reliability Standards and the proposed Reliability Standard require that limits be established for all system elements, interconnected systems be operated within these limits, operators take immediate action to mitigate operation outside these limits, and protective relays refrain from operating until the observed condition on their protected element exceeds these limits.

C. Effective Date

26. NERC proposes that PRC–023–1 be made effective consistent with the implementation plan specified in proposed Reliability Standard.[46] That plan proposes that Requirements R1 and R2 be made effective on the beginning of the first calendar quarter following applicable regulatory approvals. For smaller facilities deemed critical to system reliability that are subject to Requirements R1 and R2, NERC proposes an effective date of the beginning of the first calendar quarter 39 months after applicable regulatory approvals. NERC also proposes that, upon being notified that a facility operated between 100 kV and 200 kV has been added to the critical facilities list established in Requirement R3, the facility owner will have 24 months to comply with Requirement R1 and its sub-requirements. For Requirement R3, NERC proposes an effective date of 18 months following applicable regulatory approvals. NERC states that the technical requirements of the proposed Reliability Standard have been voluntarily implemented by most applicable entities starting in January 2005.

27. NERC also proposes to include a footnote to the ''Effective Dates'' section that states that entities that have received temporary exceptions approved by the NERC Planning Committee (via the NERC System and Protection and Control Task Force) before approval of the proposed Reliability Standard shall not be found in non-compliance with the Reliability Standard or receive sanctions if: (1) The approved requests for temporary exceptions include a mitigation plan (including schedule) to come into full compliance and (2) the non-conforming relay settings are mitigated according to the approved mitigation plan.

III. Discussion

A. Legal Standard

28. Section 215(d)(2) of the FPA states that the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[47] If the Commission disapproves of the proposed Standard in whole or in part, it must remand the proposed Standard to the ERO for further consideration.[48] Section 215(d)(5) grants the Commission authority, upon its own motion or upon complaint, to order the ERO to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a modified Reliability Standard appropriate to carry out section 215.

29. Unlike Reliability Standards, which set forth requirements with which applicable entities must comply, violation risk factors and violation severity levels do not set forth requirements, but instead are factors used in the determination of a monetary penalty for a violation of a Reliability Standard requirement.[49] The Commission's authority to revise violation risk factors and violation severity levels is not circumscribed by section 215(d).

B. Decision

30. Pursuant to section 215(d)(2) of the FPA, the Commission proposes to approve Reliability Standard PRC–023–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission agrees with the ERO that PRC–023–1 is a significant step toward improving the reliability of the Bulk-Power System in North America because it requires that protective relay settings provide essential facility protection for faults, while allowing the Bulk-Power System to be operated in accordance with established Facility Ratings.

31. As stated by NERC, Reliability Standard PRC–023–1 interacts with several existing Reliability Standards. Reliability Standards are intended to provide coordinated and complementary requirements that ensure reliable operation of the Bulk-

[40] The Commission notes that ''planning coordinator'' is an undefined entity in the NERC Glossary of Terms Used in Reliability Standards. The Commission understands that the ERO has proposed to implement the term ''planning coordinator'' in its glossary in a separate proceeding currently before the Commission.

[41] FAC–008–1 requires that transmission owners and generator owners have a Facility Ratings methodology.

[42] FAC–009–1 requires that transmission owners and generator owners establish Facility Ratings for their equipment and distribute them to affected entities.

[43] IRO–002–1 requires that reliability coordinators have sufficient monitoring to ensure that potential or actual System Operating Limits or Interconnection Reliability Operating Limits are identified.

[44] IRO–005–1 requires that reliability coordinators be aware at all times of the current state of the interconnected system (including all pre-contingency element conditions) and all post-contingency element conditions, and have mitigation plans to alleviate System Operating Limit or Interconnection Reliability Operating Limit violations.

[45] TOP–008–1 requires that transmission operators operate their systems to avoid System Operating Limit and Interconnection Reliability Operating Limit violations and take immediate steps to alleviate the conditions causing the violations when they occur.

[46] On February 2, 2009, NERC filed an erratum to its petition to address an inadvertent reference to the requested effective date. NERC requests that the Reliability Standard be made effective consistent with the implementation plan accompanying the Reliability Standard.

[47] 16 U.S.C. 824o(d)(2).

[48] 16 U.S.C. 824o(d)(4).

[49] *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284, at P 15 (2008); *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145 at P 17, *order on reh'g and compliance filing,* 120 FERC ¶ 61,145 (2007).

Power System.[50] Consequently, in implementing PRC–023–1, registered entities must comply with the requirements of other Reliability Standards. For example, protective relay settings determined and applied in accordance with the requirements of PRC–023–1 must be included in determining system performance, System Operating Limits, and Interconnection Reliability Operating Limits, and must be coordinated with other protective relay settings as required by the applicable Reliability Coordination (IRO), Transmission Operations (TOP), and TPL Reliability Standards.[51] Only in this way can the entity satisfy its obligations under other Reliability Standards and comply with the requirement in PRC–023–1 to set protective relays while ''maintaining reliable protection of the bulk electric system for all fault conditions.'' [52]

32. Similarly, Reliability Standards TPL–001–0 through TPL–004–0 require annual system assessments to determine if the system meets performance requirements, and if not, to determine what corrective action plans must be implemented.[53] In the Commission's view, protective relay settings of both primary and backup systems implemented in accordance with PRC–023–1 are subject to these requirements and must be considered as part of performing a valid assessment.[54]

33. The Commission also emphasizes that the requirements of PRC–023–1 apply to all protection systems as described in Attachment A that provide protection to the facilities defined in sections 4.1.1 through 4.1.4 of PRC–023–1, regardless of whether the protection systems provide primary or backup protection and regardless of their physical location. This is because protective relays are always applied to protect specific system elements,[55] such that when PRC–023–1 states that it governs certain protection systems ''applied to'' certain facilities, it means that the specified protection systems must be set according to its requirements if they are applied to protect the specified facilities. Consequently, transmission owners, generator owners, and distribution providers with protective relays applied to protect the facilities defined in sections 4.1.1 through 4.1.4 of PRC–023–1 must set the relays according to PRC–023–1's requirements. For example, a protective relay physically installed on the low-voltage side of a generator step-up transformer with the purpose of providing backup protection to a transmission line operated above 200 kV must be set in accordance with the requirements of PRC–023–1 because it is applied to protect a facility defined in the PRC–023–1. This is an important aspect of PRC–023–1 because it ensures that all protective relays subject to it that protect and could therefore disconnect the facilities defined in it are set in accordance with its requirements, thereby avoiding a gap in protection that would undermine its goal of ensuring reliable operation.

34. Additionally, pursuant to section 215(d)(5) of the FPA, the Commission proposes to direct the ERO to use its Reliability Standards development process to modify PRC–023–1 to address specific concerns. The Commission also proposes to direct the ERO to revise certain violation risk factors and violation severity levels for PRC–023–1 by applying the guidelines set forth in the *Violation Risk Factor Order*[56] and the *Violation Severity Level Order*.[57] As discussed below, the Commission also reminds the ERO that there are other concerns identified in the Final Blackout Report that the ERO should address and seeks ERO and public comment to gather more information about these issues. After being informed by the ERO and public comment, the Commission may, in the final rule, direct the ERO to develop further modifications to PRC–023–1.

C. Applicability

35. NERC proposes that Reliability Standard PRC–023–1 apply to transmission owners, generator owners, and distribution providers with load-responsive phase protection systems as described in Attachment A to PRC–023–1, applied to all transmission lines and transformers with low-voltage terminals operated or connected at 200 kV and above, and to those transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV that are designated by planning coordinators as critical to the reliability of the bulk electric system.[58] The Commission seeks comment on PRC–023–1's applicability with respect to: (1) Transmission owners, generator owners, and distribution providers with facilities operated between 100 kV and 200 kV and facilities operated below 100 kV that are designated as critical to the reliability of the bulk electric system; and (2) generator step-up and auxiliary transformers.

1. Applicability to Entities With Facilities Operated Between 100 kV and 200 kV and to Facilities Operated Below 100 kV That Are Critical to the Reliability of the Bulk Electric System

36. Requirement R3 and its sub-requirements require the planning coordinator to have a process to determine and maintain a list of facilities operated between 100 kV and 200 kV that are critical to the reliability of the bulk electric system and are therefore subject to Requirement R1. There is no similar requirement for facilities operated below 100 kV that are designated by Regional Entities as critical to reliability.

37. In its petition, NERC states that it decided not to make PRC–023–1 applicable to all facilities operated above 100 kV because doing so would

[50] For example, the critical clearing time needed to achieve the criteria identified in Table 1 of the TPL Reliability Standards would be an input to the coordination of protection systems in Reliability Standard PRC–001–1.

[51] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1435, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007) (''Protection systems on Bulk-Power System elements are an integral part of reliable operations * * * In deriving [System Operating Limits] and [Interconnection Reliability Operating Limits], moreover, the functions, settings, and limitations of protection systems are recognized and integrated.'').

[52] PRC–023–1, Requirement R1.

[53] *See* TPL–002–0 and TPL–003–0 Reliability Standards, Requirements R1 and R2.

[54] *See* TPL–002–0 through TPL–004–0, Requirement R1.

[55] *See e.g.* Reliability Standard PRC–001–1, Requirement R1 (requiring that ''[e]ach Transmission Operator, Balancing Authority, and Generator Operator shall be familiar with the purpose and limitations of protection system schemes *applied* in its area.'') (emphasis added).

[56] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, *order on reh'g and compliance filing,* 120 FERC ¶ 61,145 (2007) (*Violation Risk Factor Order*).

[57] *North American Electric Reliability Corporation,* 123 FERC ¶ 61,284, *order on reh'g and compliance filing,* 125 FERC ¶ 61,212 (2008) (*Violation Severity Level Order*).

[58] Section 4 (Applicability) of the proposed Standard provides:

4.1. Transmission Owners with load-responsive phase protection systems as described in Attachment A, applied to facilities defined below:

4.1.1 Transmission lines operated at 200 kV and above.

4.1.2 Transmission lines operated at 100 kV to 200 kV as designated by the Planning Coordinator as critical to the reliability of the Bulk Electric System.

4.1.3 Transformers with low voltage terminals connected at 200 kV and above.

4.1.4 Transformers with low voltage terminals connected at 100 kV to 200 kV as designated by the Planning Coordinator as critical to the reliability of the Bulk Electric System.

4.2. Generator Owners with load-responsive phase protection systems as described in Attachment A, applied to facilities defined in 4.1.1 through 4.1.4.

4.3. Distribution Providers with load-responsive phase protection systems as described in Attachment A, applied according to facilities defined in 4.1.1 through 4.1.4., provided that those facilities have bi-directional flow capabilities.

4.4. Planning Coordinators.

increase implementation costs ''by approximately two orders of magnitude'' and distract financial, analytical, and staff resources from other areas that it claims have a higher effect on reliability.[59] NERC also claims that making PRC–023–1 applicable to all circuits 100 kV and above (absent a determination of criticality as established in the Requirements) would have little additional benefit to the reliability of the interconnected system.[60] NERC states that the protection of circuits above 200 kV is considerably demanding of the most protective relays, and it is therefore customary that most modern protective relays are applied to circuits above 200 kV.[61] NERC further states that communications-based relaying, which can detect faults over the entire length of a circuit as well as provide communications-based backup protection (rather than backup protection based on overreaching distance relays) is much more common at 200 kV and above, and that the substation bus arrangements at 200 kV and above diminish the need for relays at remote locations that will detect faults in the event of protective equipment failure.[62] NERC states that these factors contributed to its decision to make PRC–023–1 universally applicable to all facilities 200 kV and above, and to make it applicable only to facilities between 100 kV and 200 kV that are designated as critical to the reliability of the bulk electric system.[63]

38. NERC does not specifically address facilities operated below 100 kV that are designated by Regional Entities as critical to reliability, but it explains in general that it decided to make PRC–023–1 voltage-level-specific because the definition of what is included in the ''bulk electric system'' varies throughout the eight Regional Entities and because the effects of PRC–023–1 are not constrained to regional boundaries.[64]

Commission Proposal

39. The Commission expects that the planning coordinator's process for determining the facilities operated between 100 kV and 200 kV that are critical to the reliability of the bulk electric system will be robust enough to identify all such facilities and will be consistent across regions. With this in mind, the Commission is concerned that the approach established in Requirement R3 may not meet these expectations.

40. Requirement R3 uses an ''add in'' approach to identify facilities operated between 100 kV and 200 kV that are critical to the reliability of the bulk electric system and therefore subject to Requirement R1 (i.e., initially exclude facilities operated between 100 kV and 200 kV from the requirements of the Standard, then through study ''add in'' facilities that are determined to be critical to the reliability of the bulk electric system). Since approximately 85 percent of circuit miles of electric transmission are operated at 253 kV and below,[65] the Commission believes that the approach in Requirement R3 may not result in a comprehensive study to identify applicable facilities and, at the outset, will effectively exempt a large percentage of bulk electric system facilities that should otherwise be subject to the Reliability Standard. In fact, NERC acknowledged that an ''add in'' approach resulted in such an outcome with respect to the identification of Critical Cyber Assets.[66]

41. In its report on the 2003 blackout, NERC recommended that all transmission owners should evaluate the zone 3 relay settings ''operating at 230 kV and above.''[67] In the Final Blackout Report, the Task Force recommended that NERC go further than it had proposed and ''broaden the review to include operationally significant 115 kV and 138 kV lines, e.g., lines that are part of monitored flowgates or interfaces.''[68] While NERC offers a general explanation of why it proposed that PRC–023–1 apply only to facilities operated at 200 kV and above,[69] it does not provide a technical analysis to support the ''add in'' approach in Requirement R3. During the 2003 blackout, load-responsive phase protection relays without communications-based relaying operated unnecessarily, contributing to cascading outages. This occurred for facilities operated above and below 200 kV. While NERC asserts that most facilities operated at 200 kV and above have communications-based relaying, it also states that facilities operated at lower voltages generally do not.[70] Consequently, facilities operated below 200 kV remain vulnerable to the same problems that contributed to cascading during the 2003 blackout.

42. Moreover, the Commission is not persuaded by NERC's unsupported assertion that subjecting all facilities operated above 100 kV to PRC–023–1 would increase implementation costs ''by approximately two orders of magnitude'' and distract financial, analytical, and staff resources from other areas that might have a greater impact on reliability. PRC–023–1 implements a Final Blackout Report recommendation that was specifically developed to prevent cascading outages. The Commission believes that there is no area that has a greater impact on the reliability of the bulk electric system than preventing cascading outages. Consequently, ensuring that PRC–023–1 applies to all facilities that are critical to the reliability of the bulk electric system is necessary for it to achieve its intended reliability objective.

43. In order to meet this goal, it is the Commission's view that the process for determining the facilities operated between 100 kV and 200 kV that are critical to the reliability of the bulk electric system must include the same system simulations and assessments that are required by the TPL Reliability Standards for reliable operation for all Category of Contingencies used in transmission planning.[71] The Commission believes that such an assessment would ensure that for all operating configurations, the bulk electric system facilities subject to the proposed Reliability Standard would have the appropriate settings applied to their protective relays. The Commission expects that a comprehensive process to determine which facilities are critical to the reliability of the bulk electric system should necessarily identify nearly every facility operated at or above 100 kV.

[59] NERC Petition at 19, 41.

[60] *Id.* at 19.

[61] *Id.* at 23.

[62] *Id.*

[63] *Id.*

[64] *Id.* at 18–19; 39–41. For example, if one Region has purely performance-based criteria and an adjoining Region has voltage-based criteria, these criteria may not permit consideration of the effects of protective relay operation in one Region upon the behavior of facilities in the adjoining Region.

[65] U.S. Department of Energy, ''The Electric System Delivery Report'' issued in 2006 indicates that of the 635,000 miles of U.S. electric transmission, approximately 538,000 miles (342,000 miles 132 kV and below; 196,000 miles 132 kV–253 kV) are 253 kV and below.

[66] In an April 7, 2009 letter to industry stakeholders, NERC commented on the results of the self-certification compliance survey for Reliability Standard CIP–002–1 Critical Cyber Asset Identification. NERC stated that survey results indicate that entities may not have taken a comprehensive approach to identifying Critical Assets in all cases, and instead relied on an ''add in'' approach to identify assets. Because of this, NERC stated that a ''rule out'' approach may be more appropriate and requested that entities re-do their identification process for Critical Assets.

[67] NERC Report at 13.

[68] Final Blackout Report at 158.

[69] NERC Petition at 23.

[70] *Id.*

[71] *See* TPL–002–0 and TPL–003–0 Reliability Standards, Requirements R1.3, and R1.3.1 through R1.3.12. For example, for PRC–023–1, the Commission expects that the base cases used to determine the applicable facilities would include various generation dispatches, topologies, and maintenance outages, and would consider the effect of redundant and backup protection systems.

This is because a large percentage of the bulk electric system not only falls into the 100 kV to 200 kV category, but also supports the reliability of the high voltage transmission system (200 kV and above). Therefore, the Commission proposes to direct the ERO to modify PRC–023–1 to make it applicable to all facilities operated at or above 100 kV. The Commission recognizes that there might be a few limited examples of facilities operated between 100 kV and 200 kV that are not critical to the reliability of the bulk electric system. Therefore, the Commission also proposes to consider exceptions on a case-by-case basis for facilities operated between 100 kV to 200 kV that demonstrably would not result in cascading outages, instability, uncontrolled separation, violation of facility ratings, or interruption of firm transmission service.

44. The Commission also believes that facilities that have been identified as necessary for reliable operation of the bulk electric system, as identified in the Compliance Registry,[72] should be made subject to the proposed Reliability Standard. Although the proposed Reliability Standard does not apply to transmission owners with facilities operated below 100 kV, and such facilities are not included in NERC's standard definition of the bulk electric system, NERC acknowledges that the definition ''allows for [r]egional variations in the definition of bulk electric system.'' [73] Thus, NERC's Statement of Compliance Registry Criteria,[74] defines entities with transmission facilities operated below 100 kV that are designated by a Regional Entity as critical to reliability as ''transmission owner[s]/operator[s]'' subject to the requirements of the compliance registry and therefore to the requirements of Reliability Standards.[75] In other words, NERC acknowledges that there are facilities operated below 100 kV that are critical to the reliability of the bulk electric system.

45. In Order No. 693, the Commission accepted the NERC definition of bulk electric system but expressed concern about the potential for gaps in coverage of facilities with regard to regional definitions.[76] In the Commission's view, NERC has failed to provide a sufficient technical record to justify the exemption of facilities operated below 100 kV that have been identified by the Regional Entity as necessary to the reliability of the bulk electric system. Consequently, the Commission proposes to direct the ERO to modify PRC–023–1 to make it applicable to facilities operated below 100 kV that are designated by the Regional Entity as critical to the reliability of the bulk electric system. The Commission understands that conforming modifications to the requirements of PRC–023–1 will be necessary to reflect these proposals. The Commission requests comment on each of its proposals.

2. Generator Step-Up and Auxiliary Transformers

46. NERC states that generator step-up transformer relay loadability was intentionally omitted from PRC–023–1.[77] NERC contends that generator step-up relay loadability merits particular attention in the area of generator protection, and therefore that it would be inappropriate to include it in a transmission relay loadability standard without consideration of the overall generator protective system in place. NERC claims that it is ''imperative'' that generator step-up transformer protection settings be coordinated with other generator protection functions as well as the associated local transmission system protection.[78] NERC states that this requires careful consideration of the transient, sub-transient, and steady state generator responses to system conditions, and consideration of how the resultant loadings on the generator step-up factor into loadability.[79]

47. NERC states that the Standard Drafting Team did not include technical experts from the generator industry. NERC explains that to include generation it would have had to identify and recruit additional experts, delaying the presentation of PRC–023–1 by six months. NERC states that generator protection standards for relay loadability will be addressed in future Reliability Standards.

Commission Proposal

48. It is the Commission's intention that the ERO address in a timely manner the reliability objectives relevant to relay loadability, which include generator step-up and auxiliary transformers. One way to ensure that this occurs is for the Commission to direct the ERO to modify the proposed Reliability Standard to address these issues. This approach also has the advantage of placing coordination between generator and transmission protection systems in the same Reliability Standard. Consequently, the Commission seeks comment on whether it should direct the ERO to modify the proposed Reliability Standard to address generator step-up and auxiliary transformer loadability, or whether generator step-up and auxiliary transformer loadability should be addressed in a separate Reliability Standard, as the ERO intends. The Commission also seeks comment as to what is a reasonable timeframe for developing a modification or separate Reliability Standard to address generator step-up and auxiliary transformer loadability.

D. Need To Address Additional Issues

49. It is the Commission's view that to ensure reliable operation of the system the ERO must address both the reach of zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection, and issues related to load increases, overload, and stable power swings that occur under recognized system conditions.[80] As proposed, PRC–023–1 addresses only issues related to load increases and overloads (loadability).

1. Zone 3/Zone 2 Relays Applied as Remote Circuit Breaker Failure and Backup Protection

50. Typically, zone 3/zone 2 relays are set to reach 100 percent of the protected

[72] NERC maintains a registry of entities that are required to comply with approved Reliability Standards to the extent that they are owners, operators, and users of the bulk power system, perform a function listed in the functional types identified in the Statement of Compliance Registry Criteria, and are material to the reliable operation of the interconnected bulk power system as defined by the Statement of Compliance Registry Criteria.

[73] NERC Petition at 40. NERC defines the Bulk Electric System thusly:

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.

[74] In the Statement of Compliance Registry Criteria, NERC states that it will include in its compliance registry each entity that it concludes can materially impact the reliability of the bulk power system. NERC Statement of Compliance Registry Criteria (Revision 5.0) at 3 (October 16, 2008). *See North American Electric Reliability Corp.,* 125 FERC ¶ 61,057 (2008) (accepting revisions to NERC's Registry Criteria).

[75] The Statement of Compliance Registry Criteria defines ''transmission owner/operator'' as:

III.d.1 An entity that owns or operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or

III.d.2 An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list defined by the Regional Entity.

[76] Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 77.

[77] NERC Petition at 38.

[78] *Id.*

[79] *Id.*

[80] Like those issues addressed in Reliability Standards TPL–002–0, TPL–003–0, and TPL–004–0.

transmission line with a margin of more than 100 percent of the longest line (including any series elements such as transformers) that emanates from the remote buses. If zone 3/zone 2 relays detect a fault on an adjacent transmission line in their reach, and the relays on the faulted line fail to operate, the zone 3/zone 2 relays will operate as backup and remove the fault. However, when they operate they will disconnect both the faulted transmission line and ''healthy'' facilities that should have remained in service. To ensure coordination of protection and avoid unnecessarily disconnecting ''healthy'' facilities, zone 3/zone 2 relays are typically set to operate after a time delay.

51. The Task Force identified fourteen 345 kV and 138 kV transmission lines that disconnected during the 2003 blackout because of zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection.[81] Among the relays that operated unnecessarily were several zone 2 relays in Michigan that overreached their protected lines by more than 200 percent and operated without a time delay.[82] The Task Force stated that although these and the other relays operated according to their settings, they operated so quickly that they impeded the natural ability of the electric system to hold together and did not allow time for operators to try to stop the cascade.[83]

Commission Proposal

52. The Commission is concerned that zone 3/zone 2 relays will operate because of line load or overload in extreme contingency conditions even in the absence of a fault.[84] The large setting of zone 3/zone 2 relays makes them susceptible to operating in the absence of a fault under abnormal system conditions. This is because under abnormal system conditions, such as very high loading and large, but stable power swings, the current and voltage as measured by the impedance relay may fall within the very large magnitude and phase setting of the relay. When this occurs, the relay is susceptible to operation.

53. NERC states in its petition that PRC–023–1 is silent on the application of zone 3/zone 2 relays as remote circuit breaker failure and backup protection because it establishes requirements for any load-responsive relay regardless of its protective function.[85] However, given the Task Force's conclusions about the role zone 3/zone 2 played in the spread of the cascade in the 2003 blackout, it is the Commission's view that the ERO should develop a maximum allowable relay reach for zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection. The Commission seeks comment on whether it should direct the ERO to develop a maximum allowable reach, and if so, whether it should direct the ERO to develop a modification to PRC–023–1 or a new Reliability Standard.

2. Protective Relays Operating Unnecessarily Due to Stable Power Swings

54. Despite the loss of fourteen key transmission lines, the Task Force found that during the 2003 blackout the system did not become dynamically unstable until at least after the Hampton-Pontiac and Thetford-Jewell 345 kV lines disconnected.[86] These lines disconnected in a phase of the cascade that was caused by dynamic, but stable power swings.

55. Transient and stable power swings occur most commonly when a fault and faulted facilities are quickly removed from the system, typically within 0.1 second of detection, and the system and affected generators stabilize within several seconds, typically within 3 seconds. Dynamic power swings can also occur when the system recovers from a disturbance and achieves transient stability (typically within a 0–3 second time frame) and then returns to a steady state over a longer period of time (typically within 3–30 seconds, or even minutes). Prior to the system returning to a new steady state operating condition, it may exhibit power swings that may decrease rapidly or increase in magnitude. When the power swings decrease, the system will be able to achieve a new stable operating condition, provided that the relays protecting ''healthy'' facilities have not operated unnecessarily because of the stable power swings.

56. Each time zone 3/zone 2 relays operated and disconnected facilities because of high loading, the power flowing on the transmission system increased in magnitude and oscillated, i.e., ''swung,'' back and forth across a large portion of the interconnected systems around Lake Erie. Initially, with each swing the transmission system recovered and appeared to stabilize. However, as the power swings and oscillations increased in magnitude, zone 3/zone 2 and other relays measured levels of currents and voltages that, because of their settings, indicated a fault. Consequently, these relays operated unnecessarily and disconnected ''healthy'' transmission lines. As more ''healthy'' transmission lines were disconnected, power swings and oscillations increased in magnitude causing more ''healthy'' lines to disconnect, thus spreading the cascade.

57. The proposed Reliability Standard does not address the unnecessary operation of protective relays due to stable power swings. NERC states that it did not address power swings in PRC–023–1 because the focus of the proposed Standard is on loadability at a time when operators can take action to protect the system.[87] NERC states that during the 2003 blackout the power swing time frame was too short for operators to act, which is typical for severe power swings.[88] NERC states that in the electrical vicinity of severe power swings, relays cannot distinguish power swings from faults that trigger their operation.[89]

Commission Proposal

58. While zone 3/zone 2 relays operated during the 2003 blackout according to their settings and specifications, the inability of these relays to distinguish between a dynamic, but stable power swing and an actual fault contributed to the cascade. Because PRC–023–1 addresses only the unnecessary operation of protective relays caused by high loading conditions, and does not address unnecessary operation caused by stable power swings, the Commission is concerned that relays set according to PRC–023–1 could still operate unnecessarily because of stable power swings.

59. NERC states that in the electrical vicinity of severe power swings, relays cannot distinguish between stable power swings and actual faults. However, there are several protection applications and relays that are less susceptible to transient or dynamic power swings, including pilot wire differential, phase comparison, and blinder-blocking applications and relays, and impedance relays with non-circular operating characteristics.[90] Each of these protection applications and relays uses existing technology and has been tested and applied effectively

[81] Final Blackout Report at 80.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] NERC Petition at 39.

[86] Final Blackout Report at 82–83.

[87] NERC Petition at 39.

[88] *Id.*

[89] *Id.*

[90] Non-circular operating characteristics include, for example, off-set MHO, blinder, reactance, and lenticular operating characteristics that while still providing a long reach, are less susceptible to power swings.

to mitigate relay susceptibility to power swings.

60. Because the inability of protective relays to distinguish between actual faults and stable power swings contributed to the cascade in the 2003 blackout, and given the availability of protection applications and relays that can effectively mitigate this problem, it is the Commission's view that the use of protective relay systems that cannot differentiate between faults and stable power swings constitutes mis-coordination of the protection system and is inconsistent with entities' obligations under existing Reliability Standards.[91] In the Commission's view, a protective relay system that cannot refrain from operating under non-fault conditions because of a technological impediment is unable to achieve the performance required for reliable operation. Consequently, the Commission seeks comment on whether it should direct the ERO to develop a Reliability Standard or a modification that requires applicable entities to use protective relay systems that can differentiate between faults and stable power swings and phases out protective relay systems that cannot meet this requirement. The Commission may direct a Reliability Standard or a modification in response to these comments.

E. Concerns With the Implementation of Certain Criteria Under Requirement R1

61. Requirement R1 establishes criteria (Requirements R1.1 through R1.13) to prevent phase protective relay settings from limiting transmission system loadability while maintaining reliable protection of the bulk electric system for all fault conditions. These criteria reflect the maximum circuit loading for the various system configurations and conditions and permit the relays to be set for optimum protection while carrying that load. The criterion to be used depends on the configuration and conditions in the system in which the protective relay will be applied.

62. The Commission is concerned that some criteria established in Requirement R1 might accommodate the use of protective relays for certain system configurations where the protective relays may not be appropriate or help achieve the reliability objective of the proposed Reliability Standard. In particular, the Commission is concerned with the implementation of criteria established by Requirements R1.2 (Transmission Line Established 15–Minute Rating), R1.10 (Transformer Overcurrent Protection), and R1.12 (Long Line Relay Loadability).

1. Requirement R1.2

63. Requirement R1.2 directs the transmission owner, generation owner, or distribution provider to set transmission line relays so that they do not operate at or below 115 percent of the highest seasonal 15-minute Facility Rating of a circuit. A footnote attached to Requirement R1.2 provides that ''[w]hen a 15-minute rating has been calculated and published for use in real-time operations, the 15-minute rating can be used to establish the loadability requirement for the protective relays.'' [92]

Commission Proposal

64. The Commission is concerned that Requirement R1.2 might conflict with Requirement R4 of existing Reliability Standard TOP–004–1 (Transmission Operations), which states that ''if a transmission operator enters an unknown operating state, it will be considered to be in an emergency and shall restore operations to respect proven reliability power system limits within 30 minutes.'' [93] The Commission is concerned that the transmission operator (or any other reliability entity affected by the facility) might conclude that it has 30 minutes to restore the system to normal when in fact it has only 15 minutes because the relay settings for certain transmission facilities have been set to operate at the 15-minute rating in accordance with Requirement R1.2. This may have an adverse impact on system reliability, since the operator might not take Requirement R1.2 into consideration.

65. To ensure the reliability of the Bulk-Power System, Reliability Standards PRC–023–1 and TOP–004–1 should give a transmission operator the same amount of time to restore the system to normal operations. The Commission acknowledges that Requirement R1.2 references the ''publishing'' of a facility's 15-minute rating; however, we are not persuaded that publication of a rating is sufficient to address the potential conflict. Consequently, the Commission proposes to direct the ERO to either revise Requirement R1.2 to apply it to Reliability Standard TOP–004–1 or develop a new requirement that transmission owners, generation owners, and distribution providers give their transmission operators a list of transmission facilities that implement Requirement R1.2, or propose an equally effective and efficient approach to avoid the potential conflict. The Commission seeks comment on each of these proposals.

2. Requirement R1.10

66. Requirement R1.10 establishes criteria for applicable entities to set transformer fault protective relays and transmission line relays on transmission lines that terminate in a transformer. For this system configuration, protective relays would be set such that the transformer fault protective relays and transmission line relays do not operate at or below the greater of 150 percent of the applicable maximum transformer name-plate rating (expressed in amperes), including the forced cooled ratings corresponding to all installed supplemental cooling equipment, or 115 percent of the highest owner-established emergency transformer rating.[94]

Commission Proposal

67. The Commission understands that facility owners determine the ratings of their facilities based on a number of factors, and that they use verified methodologies to determine expected temperatures and other parameters needed to establish a rating.[95] It is the Commission's view, however, that overloading facilities at any time, but especially during system faults, could lower reliability and present a safety concern.

68. The application of a transmission line terminated in a transformer enables the transmission owner to avoid installing a bus and local circuit breaker on both sides of the transformer. Protective relay settings implemented according to Requirement R1.10 for this topology would allow the transformer to be subjected to overloads higher than its established ratings for unspecified periods of time. Transformers that have been subjected to currents over their

[91] *See supra* P 31. As discussed previously, protective relay settings determined and applied in accordance with the requirements of PRC–023–1 must be included in determining system performance, System Operating Limits, and Interconnection Reliability Operating Limits, and must be coordinated with other protective relay settings as required by the applicable IRO, TOP, and TPL Reliability Standards.

[92] NERC states in its petition that it modified the footnote in response to Commission staff's concern that 15-minute ratings may be used that are not completely reflected as facility ratings. The modification clarified that Requirement R1.2 references 15-minute ratings where such ratings have been calculated and are used for real-time operations. NERC Petition at 37.

[93] *See* Reliability Standard TOP–004–1, Requirement R4.

[94] NERC states that the Standard Drafting Team did not contain any experts on equipment ratings. NERC Petition at 31.

[95] The methodology for determining transformer ratings includes analysis of all aspects of the transformer, such as bushings, leads, stray flux heating, core heating, winding hot spots, and the formation of bubbles at those hot spots.

maximum rating have been recorded as failing violently and resulted in substantial fires. This negatively impacts reliability and raises safety concerns. While safety considerations are outside the jurisdiction of the Commission, requirements in a Reliability Standard should not be interpreted as requiring unsafe actions or designs.

69. Consequently, the Commission proposes to direct the ERO to submit a modification that requires any entity that implements Requirement R1.10 to verify that the limiting piece of equipment is capable of sustaining the anticipated overload current for the longest clearing time associated with the fault from the facility owner. If the facility owner can not verify that ability, the facility owner should apply either different protection systems or change the topology to avoid this configuration to be in compliance with PRC–023–1. The Commission seeks comments on this proposal.

3. Requirement R1.12

70. Requirement R1.12 establishes relay loadability criteria when the desired transmission line capability is limited by the requirement to adequately protect the transmission line. In these cases, the line distance relays are still required to provide adequate protection, but the implemented relay settings will limit the desired loading capability of the circuit. NERC states that in the event an essential fault protection imposes a more constraining limit on the system, the limit imposed by the fault protection is reflected within the facility rating.[96]

71. NERC claims that PRC–023–1 should cause no undue negative effect on competition or restrict the grid beyond what is necessary for reliability.[97] It explains that, with the exception of those relays that legitimately define and restrict the facility rating, PRC–023–1 removes arbitrary limits related to relay loadability that cause transmission capability limitations. NERC further points out that no market-based entity is required to comply with PRC–023–1.

Commission Proposal

72. The Commission is concerned that Requirement R1.12 allows entities to technically comply with PRC–023–1 but not achieve its stated purpose. Since protective relay settings are allowed to limit the load carrying capability of a transmission line, that line is not being utilized to its full potential in response to sudden increases in line loadings or power swings, i.e., the natural response of the Bulk-Power System will be less robust in response to system disturbances.

73. Entities subject to PRC–023–1 must employ a protection system that meets their reliability obligations, but a protection system that requires the application of Requirement R1.12 may not satisfy this requirement. Consequently, the Commission seeks comment on whether use of such a protection system is consistent with the reliability objectives of PRC–023–1, and whether the Commission should direct a modification that would require that entities that employ such a system use a different protection relay system that would meet the reliability objective of the Reliability Standard.

F. Requirement R3 and Its Sub-Requirements

74. Requirement R3 requires planning coordinators to designate which transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV are critical to the reliability of the bulk electric system and therefore subject to Requirement R1. Sub-Requirements R3.1 and R3.1.1 specify that planning coordinators must determine these facilities through a process that considers input from adjoining planning coordinators and affected reliability coordinators. Sub-Requirements R3.2 and R3.3 require planning coordinators to maintain a list of designated facilities and provide it to reliability coordinators, transmission owners, generator owners, and distribution providers within 30 days of its initial establishment, and within 30 days of any subsequent change.

Commission Proposal

75. In light of the Commission's proposal to direct the ERO to modify PRC–023–1 to make it applicable to all facilities operated at or above 100 kV, with the possibility of case-by-case exceptions, and to all facilities operated below 100 kV that are designated by the Regional Entity as critical to the reliability of the bulk electric system, the Commission proposes to direct the ERO to revise Requirement R3 and Sub-Requirement R3.2 to require that the planning coordinator maintain a list that reflects the Commission's proposal. Moreover, it is the Commission's view that the Regional Entity should know which facilities in its area are subject to the Reliability Standard. Accordingly, the Commission proposes to direct the ERO to modify Requirement R3.3 to add the Regional Entity to the list of entities that receive the list as required by Requirement R3.2.

G. Attachment A

76. Attachment A of PRC–023–1 contains three sections: (1) A list of examples of load-responsive relays subject to PRC–023–1, (2) a statement that out-of-step blocking protective schemes shall be evaluated to ensure that those applications do not block trip for fault during the loading conditions defined within the requirements of PRC–023–1, and (3) a list of Protective Systems that are excluded from the requirements of the PRC–023–1. The Commission has concerns about sections (2) and (3).

1. Section (2): Evaluation of Out-of-Step Blocking Schemes

77. Section (2) of Attachment A states that the ''[S]tandard includes out-of-step blocking schemes which shall be evaluated to ensure that they do not block trip for fault during the loading conditions defined within the requirements.'' This obligation, however, is not included as a requirement in the proposed Reliability Standard. Instead, it is included in Attachment A. Requirements should be in the requirements section of a Reliability Standard to ensure compliance. Since the ERO intends to require the evaluation of out-of-step blocking applications, language to this effect should be included as a requirement and not as a statement in an Attachment. Consequently, the Commission proposes to direct the ERO to modify PRC–023–1 by adding the statement in section (2) of Attachment A as an additional requirement with the appropriate violation risk factor and violation severity level assignments.

2. Section (3): List of Protection Systems Excluded From the Standard

78. Section (3) lists certain protection systems that are excluded from the requirements of PRC–023–1. However, in its petition NERC does not provide a technical rationale for excluding any load-responsive phase protection systems from the requirements of PRC–023–1. Thus, it is not clear to the Commission that the exclusions in section 3 are justified.[98]

79. For example, subsection 3.1 excludes from the requirements of PRC–023–1: (1) Overcurrent elements that are enabled only during loss of potential conditions and (2) elements that are enabled only during a loss of

[96] NERC Petition at 14.

[97] *Id.* at 27.

[98] The exclusion of protection systems intended for the detection of ground fault conditions appears to be unnecessary because these systems are not load-responsive.

communications. This subsection could be interpreted to exclude certain protection systems that use communications to compare current quantities and directions at both ends of a transmission line, such as pilot wire protection or current differential protection systems supervised by fault detector relays. The Commission understands that if supervising fault detector relays are excluded from PRC–023–1, and are set below the rating of the protected element, the loss of communications and heavy line loading conditions that approach the line rating would cause these protective relays to operate and unnecessarily disconnect the line. If adjacent transmission lines have similar protection systems and settings, those protection systems would also operate unnecessarily, resulting in cascading outages.

80. The Commission seeks comment on whether the exclusions in section 3 are technically justifiable and whether the Commission should direct the ERO to modify PRC–023–1 by deleting specific subsections in section 3. The Commission also seeks comment on whether it should direct the ERO to modify subsection 3.1 to clarify that it does not exclude from the requirements of PRC–023–1 such protection systems as described above.

81. The Commission also notes that subsection 3.5 excludes from the requirements of PRC–023–1 ''relay elements used only for [s]pecial [p]rotection [s]ystems applied and approved in accordance with NERC Reliability Standards PRC–012 through PRC–017.'' Since PRC–012–0, PRC–013–0 and PRC–014–0 are currently proposed Reliability Standards pending with the Commission, subsection 3.5 is not enforceable until approved by the Commission.[99]

H. Effective Date

82. NERC requests that PRC–023–1 be made effective consistent with the implementation plan accompanying the Reliability Standard. For Requirements R1 and R2, NERC proposes that transmission lines operated at 200 kV and above and transformers with low-voltage terminals connected at 200 kV and above (except switch-on-to fault-schemes) be made effective on the beginning of the first calendar quarter following applicable regulatory approvals. For transmission lines operated between 100 kV and 200 kV and transformers with low-voltage terminals connected between 100 kV and 200 kV that are designated by planning coordinators as critical to the reliability of the bulk electric system (including switch-on-to fault-schemes) in order to prevent a cascade, NERC proposes an effective date of the beginning of the first calendar quarter 39 months after applicable regulatory approvals. NERC also proposes that each transmission owner, generator owner, and distribution provider have 24 months from notification by the planning coordinator that a facility has been added to the planning coordinator's critical facilities list (pursuant to Requirement R3.3) to comply with R1 and its sub-requirements. For Requirement R3, NERC proposes an effective date of 18 months following applicable regulatory approvals.

83. NERC also proposes to include a footnote to the ''Effective Dates'' section that states that entities that have received temporary exceptions approved by the NERC Planning Committee (via the NERC System and Protection and Control Task Force) before approval of the proposed Reliability Standard shall not be found in non-compliance with the Reliability Standard or receive sanctions if: (1) The approved requests for temporary exceptions include a mitigation plan (including schedule) to come into full compliance and (2) the non-conforming relay settings are mitigated according to the approved mitigation plan.[100]

84. NERC contends this implementation plan presents a reasonable time frame to allow all entities to be in compliance. NERC states that the technical requirements of PRC–023–1 have been implemented by most applicable entities starting in January 2005 under voluntary activities directed by the NERC Planning Committee and that most entities have provided assurances to NERC that they have implemented these technical requirements. NERC states that the implementation period established in the implementation plan provides an opportunity for those entities that did not participate in the voluntary activities to comply with PRC–023–1, and for all entities to establish the documentation necessary to demonstrate compliance.

Commission Proposal

85. The Commission proposes to approve the implementation plan as it relates to facilities operated at 200 kV and above. In light of the Commission's proposal to direct the ERO to modify PRC–023–1 to make it applicable to all facilities operated at or above 100 kV, with the possibility of case-by-case exceptions, and to all facilities operated below 100 kV that are designated by the Regional Entity as critical to the reliability of the bulk electric system, the Commission proposes an effective date of 18 months following applicable regulatory approvals for facilities operated below 200 kV. The Commission seeks comment on these proposals.

86. The Commission proposes not to approve the temporary exemption of certain entities from enforcement actions while they come into compliance with PRC–023–1's requirements. In the Commission's view, it is best that discussions about potential enforcement actions are left out of a Reliability Standard and instead handled by NERC's compliance and enforcement program. Consequently, the Commission proposes to direct the ERO to modify PRC–023–1 by removing the footnote.

I. Violation Risk Factors

87. As part of its compliance and enforcement program, NERC assigns a low, medium, or high violation risk factor to each requirement of each mandatory Reliability Standard to associate a violation of the requirement with its potential impact on the reliability of the Bulk-Power System. Violation risk factors are defined as follows:

High Risk Requirement: (a) Is a requirement that, if violated, could directly cause or contribute to Bulk-Power System instability, separation, or a cascading sequence of failures, or could place the Bulk-Power System at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to Bulk-Power System instability, separation, or a cascading sequence of failures, or could place the Bulk-Power System at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.

Medium Risk Requirement: (a) Is a requirement that, if violated, could directly affect the electrical state or the capability of the Bulk-Power System, or the ability to effectively monitor and control the Bulk-Power System, but is unlikely to lead to Bulk-Power System instability, separation, or

[99] Order No. 693–A, FERC Stats. & Regs. ¶ 31,242 at P 138.

[100] The footnote states:

Temporary Exceptions that have already been approved by the NERC Planning Committee via the NERC System and Protection and Control Task Force prior to the approval of this [Reliability] [S]tandard shall not result in either findings of non-compliance or sanctions if all of the following apply: (1) The approved requests for Temporary Exceptions include a mitigation plan (including schedule) to come into full compliance, and (2) the non-conforming relay settings are mitigated according to the approved mitigation plan.

cascading failures; or (b) is a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor, control, or restore the Bulk-Power System, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to Bulk-Power System instability, separation, or cascading failures, nor to hinder restoration to a normal condition.

Lower Risk Requirement: Is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor and control the Bulk-Power System; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor, control, or restore the Bulk-Power System.[101]

88. In the *Violation Risk Factor Order,* the Commission addressed violation risk factors filed by NERC for Version 0 and Version 1 Reliability Standards. In that order, the Commission used five guidelines for evaluating the validity of each violation risk factor assignment: (1) Consistency with the conclusions of the Final Blackout Report; (2) consistency within a Reliability Standard; (3) consistency among Reliability Standards with similar Requirements; (4) consistency with NERC's proposed definition of the violation risk factor level; and (5) assignment of violation risk factor levels to those requirements in certain Reliability Standards that co-mingle a higher risk reliability objective and a lower risk reliability objective.[102]

89. In its petition, NERC assigned violation risk factors only to the main requirements of the proposed Reliability Standard and did not assign violation risk factors to any of the sub-requirements.[103] NERC assigns Requirement R1 a high violation risk factor, Requirement R2 a medium violation risk factor, and Requirement R3 a medium violation risk factor.

90. As an initial matter, NERC's compliance and enforcement program requires it to assign a violation risk factor to each sub-requirement of a proposed Reliability Standard. In addition, the *Violation Severity Level Order* stated that each requirement assigned a violation risk factor also must be assigned at least one violation severity level.[104] As set forth in the NERC's Sanction Guidelines, the intersection of these two factors is the first step in the determination of a monetary penalty for a violation of a requirement of a Reliability Standard. Therefore, consistent with Commission precedent and NERC's Sanction Guidelines, each requirement must have a violation risk factor and violation severity level assignment.

1. Requirement R1 and Its Sub-Requirements

91. Requirement R1 establishes criteria (sub-Requirements R1.1–R1.13) to prevent phase protective relay settings from limiting transmission system loadability while maintaining reliable protection of the bulk electric system for all fault conditions.[105] NERC assigns Requirement R1 a high violation risk factor. The Commission agrees that Requirement R1 should be assigned a high violation risk factor because a violation of Requirement R1 has the potential to cause cascading outages like those that occurred during the 2003 blackout. NERC did not assign violation risk factors to sub-Requirements R1.1 through R1.13.

Commission Proposal

92. The Commission agrees that Requirement R1 should be assigned a high violation risk factor because a violation of Requirement R1 has the potential to cause cascading outages like those that occurred during the 2003 blackout. It is the Commission's view that because the sub-requirements in Requirement R1 set forth criteria for compliance with Requirement R1, the reliability risk of a violation of any one of the sub-requirements is the same as with a violation of Requirement R1. Therefore, consistent with the high violation risk factor assigned to Requirement R1, the Commission proposes to direct the ERO to assign a high violation risk factor to each of the sub-Requirements R1.1 through R1.13. The Commission seeks comment on this proposal.

2. Requirement R3

93. Requirement R3 requires planning coordinators to designate which transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV are critical to the reliability of the bulk electric system in order to prevent a cascade and therefore should be subject to Requirement R1. NERC assigns Requirement R3 a medium violation risk factor.

Commission Proposal

94. In light of the Commission's proposal to direct the ERO to modify Requirement R3 and its sub-requirements, the Commission proposes to direct the ERO to assign a violation risk factor to the revised Requirement R3 and its revised sub-requirements that is consistent with the revisions and the Violation Risk Factor Guidelines.

J. Violation Severity Levels

95. For each requirement of a Reliability Standard, NERC states that it will also define up to four violation severity levels—lower, moderate, high and severe—as measurements of the degree to which the requirement was violated. For a specific violation of a particular requirement, NERC or the Regional Entity will establish the initial value range for the base penalty amount by finding the intersection of the applicable violation risk factor and violation severity level in the Base Penalty Amount Table in Appendix A of the Sanction Guidelines.[106]

96. In the *Violation Severity Level Order,* the Commission addressed violation severity level assignments filed by NERC for the 83 Reliability Standards approved in Order No. 693. In that order, the Commission developed four guidelines for evaluating violation severity levels filed by NERC: (1) Violation severity level assignments should not have the unintended consequence of lowering the current level of compliance; (2) violation severity level assignments should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties; (3) violation severity level assignments should be consistent with the corresponding requirement; and (4) violation severity level assignments should be based on a single violation,

[101] *Violation Risk Factor Order,* 119 FERC ¶ 61,145 at P 9.

[102] For a complete discussion of each guideline, *see id.* P 19–36.

[103] We note that, in *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 722, 126 FERC ¶ 61,255 at P 45 (2009), the ERO proposed to develop violation risk factors and violation severity levels for Requirements but not sub-requirements. The Commission denied the proposal as ''premature'' and, instead, encouraged the ERO to ''develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors.''

[104] *Violation Severity Level Order,* 123 FERC ¶ 61,284 at P 3.

[105] Requirement R1 also requires each transmission owner, generator owner, and distribution provider to evaluate relay loadability at 0.85 per unit voltage and a power factor angle of 30 degrees.

[106] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,248 at P 74, *order on clarification,* 120 FERC ¶ 61,239 (2007) (directing NERC to develop up to four violation severity levels (lower, moderate, high, and severe) as measurements of the degree of a violation for each requirement and sub-requirement of a Reliability Standard and submit a compliance filing by March 1, 2008.).

not on a cumulative number of violations.[107]

97. In its petition, NERC proposes violation severity levels for Requirements R1, R2, and R3. NERC did not propose violation severity levels for sub-Requirements R1.1 through R1.13 and R3.1 through R3.3.

98. The Commission is concerned that the violation severity levels assigned to Requirements R1 and R2 may not be consistent with certain guidelines set forth in the *Violation Severity Level Order.* Moreover, NERC did not propose violation severity levels for any sub-requirements. As discussed previously, each requirement that is assigned a violation risk factor must also be assigned at least one violation severity level. Accordingly, the Commission proposes to direct the ERO to revise violation severity levels assigned to Requirements R1 and R2 as well as to submit violation severity levels for sub-Requirements R1.1 through R1.13 that are consistent with the guidelines set forth in the *Violation Severity Order* as discussed below.

1. Requirement R1

99. Requirement R1 and sub-Requirements R1.1 through R1.13 establish criteria to be used for setting phase protective relays. NERC proposes violation severity levels that assign a ''moderate'' severity for a violation when the applicable entity complied with the criteria, but its evidence of compliance is incomplete or incorrect for one or more of the criteria and a ''severe'' violation when the relays' settings do not comply with any of the criteria or evidence does not exist to support compliance with any one of the criteria.

Commission Proposal

100. It is the Commission's view that the violation severity levels NERC assigns to Requirement R1 combine the degree or severity of a violation of the Requirement (e.g., the relay settings do not comply with any of the sub-requirements) with an outcome with regard to determining compliance with the Requirement (e.g., evidence that the relay settings comply with the sub-requirements). For example, Guideline 3 ensures that assigned violation severity levels are consistent with the corresponding requirement i.e., the degrees of non-compliance are based on the text of the requirement. The text of Requirement R1 does not explicitly state that the applicable entity have evidence that the relay settings comply with the criteria set forth in the sub-Requirements R1.1 through R1.13; only that the applicable entity use criteria. The Commission believes that having evidence that the relay settings comply with the criteria is an outcome that is expected with compliance with the Requirement. This is consistent with NERC's description of a requirement's ''Measure'' and not indicative of the degree to which the Requirement was violated.[108] As such, since the text of the assigned violation severity level as it is not consistent with the corresponding requirement, the assigned violation severity levels are not consistent with Guideline 3.

101. The Commission believes that violation severity levels for Requirement R1 and its sub-requirements could be assigned applying a binary approach; i.e., either an entity applied the criteria or it did not. Consistent with the binary approach, a single violation severity level assignment for Requirement R1 and single violation severity level for each of the sub-Requirements R1.1 through R1.13 is appropriate. Therefore, the Commission proposes to direct the ERO to assign a single violation severity level to Requirement R1 and a single violation severity level to each of the sub-Requirements R1.1 through R1.13, consistent with its Guideline 2a compliance filing in Docket No. RR08–4–004 and seeks comment on this proposal.[109]

2. Requirement R2

102. Requirement R2 states that transmission owners, generator owners, and distribution providers that use a circuit with the protective relays' settings determined by the practical limitations described in sub-Requirements R1.6 through R1.9, R1.12, or R1.13 must use the calculated circuit capability as the circuit's Facility Rating and must obtain the agreement of the planning coordinator, transmission operator, and reliability coordinator with the calculated circuit capability. NERC designates the Requirement as a binary requirement and assigns a ''lower'' violation severity level if an applicable entity uses the criteria described in sub-Requirements R1.6 through R1.9, R1.12, or R1.13, but evidence does not exist that the required agreement was obtained.

Commission Proposal

103. It is the Commission's view that the violation severity level NERC assigns to Requirement R2 does not reflect the degree or severity of a violation of the requirement, but rather describes an outcome with regard to determining compliance with the requirement. As discussed previously, Guideline 3 ensures that assigned violation severity levels are consistent with the corresponding requirement. The text of Requirement R2 does not explicitly state that the applicable entity have evidence of the agreement; only that agreement is obtained. While the Commission agrees that Requirement R2 is a binary requirement, the Commission disagrees with the text of the assigned violation severity level as it is not consistent with the corresponding requirement, and thus not consistent with Guideline 3. As such, the Commission proposes that the single violation severity level assigned to Requirement R2 should be for the failure of the applicable entity that used the described criteria to calculate circuit capability as the Facility rating to obtain agreement on that rating with the required entities. The Commission seeks comment on this proposal.

104. Also, the Commission points out that the single violation severity level NERC assigns to this binary requirement appears to be inconsistent with NERC's Guideline 2a compliance filing in Docket No. RR08–4–004. In that docket, NERC assigns the single violation severity level for binary requirements to the ''severe'' category. Here, it assigns the single violation severity level to the ''lower'' category. Consistent with Guideline 2a of the *Violation Severity Level Order,* the Commission expects the single violation severity level assigned to binary requirements to be consistent. Consequently, the Commission proposes to direct the ERO to revise the violation severity level it assigns to Requirement R2 to be consistent with Guideline 2a.

3. Requirement R3

105. Requirement R3 requires planning coordinators to designate which transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV are critical to the reliability of the bulk electric system in order to prevent a cascade and therefore subject to Requirement R1. Sub-Requirements R3.1 and R3.1.1 specify that planning coordinators must have a process to determine those facilities and that this process must consider input from adjoining planning coordinators and

[107] For a complete discussion of each guideline, see the *Violation Severity Level Order,* 123 FERC ¶ 61,284 at P 19–36.

[108] NERC Reliability Standards Development Procedure, see descriptions of ''Measure'' and ''Violation Severity Level.''

[109] In its Guideline 2a compliance filing in Docket No. RR08–4–004 currently before the Commission, NERC proposes to assign the single violation severity level for binary Requirements to the ''severe'' category.

affected reliability coordinators. Sub-Requirements R3.2 and R3.3 require planning coordinators to maintain a list of designated facilities and provide it to reliability coordinators, transmission owners, generator owners, and distribution providers within 30 days of its initial establishment, and within 30 days of any subsequent change. NERC proposes a ''severe'' violation severity level when the applicable entity has neither a process to determine facilities that are critical to the reliability of the bulk-electric system nor a current list of critical facilities, and ''moderate'' and ''high'' violation severity levels based on the number of days that a planning coordinator is late in providing the list to the required entities.

Commission Proposal

106. In light of the Commission's proposal to direct the ERO to modify Requirement R3 and its sub-requirements, the Commission proposes to direct the ERO to assign a violation severity level to the revised Requirement R3 and its revised sub-requirements that is consistent with the revisions and the guidelines set forth in the *Violation Severity Level Order.*

Summary

107. Reliability Standard PRC–023–1 appears to be just, reasonable, not unduly discriminatory or preferential, and in the public interest. Accordingly, the Commission proposes to approve Reliability Standard PRC–023–1 as mandatory and enforceable. In proposing to approve PRC–023–1, the Commission emphasizes that (1) protective relay settings determined and applied in accordance with its requirements must be included in determining system performance, System Operating Limits and Interconnection Reliability Operating Limits, and must be coordinated with other protective relay settings as required by the applicable IRO, TOP, and TPL Reliability Standards and (2) the proposed Reliability Standard's requirements govern all relays subject to the proposed Reliability Standard applied to protect, in any capacity, the applicable facilities defined in the proposed Reliability Standard.

108. In addition, the Commission proposes to direct the ERO to address specific concerns and revise violation risk factors and violation severity level assignments of the Reliability Standard as discussed above applying the guidelines set forth in the *Violation Risk Factor Order* and *Violation Severity Order* 90 days before the effective date of the Reliability Standard.

IV. Information Collection Statement

109. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[110] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[111] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which OMB approval and validity of the control number are about to expire.[112]

110. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

111. This NOPR proposes to approve one new Reliability Standard developed by NERC as the ERO. Section 215 of the FPA authorizes the ERO to develop Reliability Standards to provide for the operation of the Bulk-Power System. Pursuant to the statute, the ERO must submit to the Commission for approval each Reliability Standard that it proposes to be made effective.[113]

112. Proposed Reliability Standard PRC–023–1 does not require responsible entities to file information with the Commission. However, the Reliability Standard requires applicable entities to develop and maintain certain information, subject to audit by a Regional Entity. In particular, transmission owners, generator owners and distribution providers must ''have evidence'' to show that each of its transmission relays are set according to the one of the criteria in Requirement R1 of the Reliability Standard.[114] In certain circumstances set forth in the Reliability Standard, transmission owners, generator owners and distribution providers must have evidence that a facility rating was agreed to by the relevant planning authority, transmission operator and reliability coordinator.[115] Further, planning coordinators must have (1) a documented process for the determination of facilities that are critical to bulk electric system reliability and (2) a current list of such facilities.

113. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of March 3, 2009 and NERC's July 30, 2008 Petition that is the subject of this proceeding. According to the NERC compliance registry, as of March 3, 2009, NERC has registered 568 distribution providers, 825 generator owners and 324 transmission owners. Further, NERC has registered 79 planning authorities. However, the Reliability Standard does not apply to all transmission owners, generator owners and distribution providers. Rather, the Reliability Standard applies to transmission owners, generator owners and distribution providers with load-response phase protection systems applied to transmission lines operated at 200 kV and above—and other criteria set forth in the Applicability section of the Standard, and as described in Attachment A of the Standard. Further, some entities are registered for multiple functions, so there is some overlap between the entities registered as distribution providers, transmission owners, and generator owners. Given these additional parameters, the Commission estimates that the Public Reporting burden for the requirements contained in the NOPR is as follows:

[110] 5 CFR 1320.11.

[111] 44 U.S.C. 3501–20.

[112] 44 U.S.C. 3502(3)(A)(i), 44 U.S.C. 3507(a)(3).

[113] *See* 16 U.S.C. 824o(d).

[114] *See* Reliability Standard PRC–023–1, Measure M1.

[115] *Id.,* Measure M2.

Data collection	Number of respondents	Number of responses	Hours per respondent	Total annual hours
FERC–725G				
M1—TOs, GOs and DPs must "have evidence" to show that each of its transmission relays are set according to Requirement R1.	450	1	Reporting: 0 Recordkeeping: 100	Reporting: 0. Recordkeeping: 45,000.
M2—Certain TOs, GOs and DPs must have evidence that a facility rating was agreed to by PA, TOP and RC.	166	1	Reporting: 0 Recordkeeping: 10	Reporting: 0. Recordkeeping: 1,660.
M3—PC must document process for determining critical facilities and (2) a current list of such facilities.	79	1	175	13,825.
Total				60,485.

• *Total Annual hours for Collection: (Reporting + recordkeeping)* = 60,485 hours. *Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost to be the total annual hours.

Recordkeeping = 60,485 @ $40/hour = $__241,940 ____.

Labor (file/record clerk @ $17 an hour + supervisory @ $23 an hour)

• Total costs = $_241,940 ____.

• *Title:* FERC–725–G Mandatory Reliability Standard for Transmission Relay Loadability.

• *Action:* Proposed Collection of Information.

• *OMB Control No:* [To be determined.]

• *Respondents:* Business or other for profit, and/or not for profit institutions.

• *Frequency of Responses:* On Occasion

• *Necessity of the Information:* The Transmission Relay Loadability Reliability Standard, if adopted, would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the proposed Reliability Standard would ensure that protective relays are set according to specific criteria to ensure that relays reliably detect and protect the electric network from all fault conditions, but do not limit transmission loadability or interfere with system operator's ability to protect system reliability.

• *Internal review:* The Commission has reviewed the requirements pertaining to the proposed Reliability Standard for the Bulk-Power System and determined that the proposed requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

114. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*]. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], e-mail: *oira_submission@omb.eop.gov.*

V. Environmental Analysis

115. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[116] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[117] Accordingly, neither an environmental impact statement nor environmental assessment is required.

VI. Regulatory Flexibility Act Analysis

116. The Regulatory Flexibility Act of 1980 (RFA)[118] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the entities, i.e., transmission owners, generator owners, distribution providers, and "planning coordinators," or alternatively "planning authorities," to which the requirements of this rule would apply do not fall within the definition of small entities.[119]

117. As indicated above, based on available information regarding NERC's compliance registry, approximately 525 entities will be responsible for compliance with the new Reliability Standard. The Commission certifies that the proposed Reliability Standard will not have a significant adverse impact on a substantial number of small entities.

118. Based on this understanding, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VII. Comment Procedures

119. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due July 27, 2009. Comments must refer to Docket No. RM08–13–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

120. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents

[116] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[117] 18 CFR 380.4(a)(5) (2008).

[118] 5 U.S.C. 601–12.

[119] The RFA definition of "small entity" refers to the definition provided in the Small Business Act (SBA), which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632 (2006). According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

121. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

122. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

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

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

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

List of Subjects in 18 CFR Part 40

Electric power, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12350 Filed 5–27–09; 8:45 am]

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Notices

Federal Register

Vol. 74, No. 101

Thursday, May 28, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 21, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Standards for Privately Owned Quarantine Facilities for Ruminants.

OMB Control Number: 0579–0232.

Summary of Collection: Under the Animal Health Protection Act, the Animal and Plant Health Inspection Service (APHIS) is authorized among other things, to prohibit or restrict the importation of animals, animal products, and other articles into the United States to prevent the introduction of animal diseases and pests. The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States.

Need and Use of the Information: APHIS will collect the following information to determine if permission will be granted to establish and operate a private quarantine facility for ruminants: (1) Application Letter; (2) Compliance Agreement; (3) Daily Log; and (4) Request for Variance. Without the information, APHIS would be forced to discontinue its program of allowing the operation of privately owned quarantine facilities for ruminants, a development that would hamper U.S. animal import activities.

Description of Respondents: Business or other for-profit: State, Local or Tribal Government.

Number of Respondents: 3.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 170.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–12341 Filed 5–27–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 21, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Special Use Administration.

OMB Control Number: 0596–0082.

Summary of Collection: Several statutes authorize the Forest Service (FS) to issue and administer authorizations for use and occupancy of National Forest System (NFS) lands and require the collection of information from the public for those purposes including Title 5 of the Federal Land Policy and Management Act of 1976 (FLPMA, Pub. L. 94–579), the Organic Administration Act of 1897, (16 U.S.C. 551); the National Forest Ski Area Permit Act (16 U.S.C. 497b); section 28 of the Mineral Leasing Act (30 U.S.C. 185); the National Forest Roads and

Trails Act (FRTA, 16 U.S.C. 532–538); section 7 of the Granger-Thye Act (16 U.S.C. 480d); the Act of May 20, 2000 (16 U.S.C. 460/-6d); and the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814). Forest Service regulations implementing these authorities, found at Title 36, Code of Federal Regulations, Section 251, Subpart B (36 CFR part 251, subpart B), contain information collection requirements, including submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information; to prepare and update an operating plan; to prepare and update a maintenance plan; and to submit compliance reports and information updates.

Need and Use of the Information: The information collected is evaluated by the FS to ensure that authorized uses of NFS lands are in the public interest and are compatible with the agency mission. The information helps the agency identify environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration. There are six categories of information collected: (1) Information required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands; (2) information required from applicants to complete special use authorizations; (3) annual financial information required from holders to determine land use fees; (4) information required from holders to prepare and update operating plans; (5) information required from holders to prepare and update maintenance plans; and (6) information required from holders to complete compliance reports and information updates.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 85,842.

Frequency of Responses: Reporting: On occasion; Quarterly.

Total Burden Hours: 247,107.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–12343 Filed 5–27–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces additional Fiscal Year (FY) 2009 funding available through its Technical Assistance and Training Grant Program (TAT). The Rural Utilities Service is providing $500,000 in funding to conduct water resource studies in the states affected by hurricanes Katrina, Rita, Ike, and/or Wilma (Florida, Alabama, Mississippi, Louisiana, and Texas). The additional $500,000 will be for water resource studies only.

DATES: Applications for the Water Resource Studies grant(s) must be received by June 29, 2009. Reminder of competitive grant application deadline: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than 30 days after this announcement appears in the **Federal Register**.

ADDRESSES: You may obtain application guides and materials for the water resource studies grants the following ways:

- The Internet at the RUS Water and Environmental Programs (WEP) Web site: *http://www.usda.gov/rus/water/.*
- You may also request application guides and materials from RUS by contacting WEP at (202) 720–9586.

You may submit:

Completed paper applications for Water Resource Studies grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked ''Attention: Assistant Administrator, Water and Environmental Programs.''

- Electronic grant applications at *http://www.grants.gov/* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water Program Division, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 690–3789, fax: (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Water Resource Studies Grants.

Announcement Type: Funding Level Announcement and Solicitation of Applications.

Authority: 7 U.S.C. 1926 (a)(14); Public Law 109–97, 119 Stat. 2120.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.761.

Dates: You may submit completed application for a TAT grant from the date of announcement to 30 days after this announcement appears in the **Federal Register**.

Reminder of Competitive Grant Application Deadline: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than 30 days after this announcement appears in the **Federal Register** to be eligible for funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the Water Resource Studies Grants;
II. Award Information: Available funds, maximum amounts;
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility;
IV. Application and Submission Information: Where to get application materials; what constitutes a completed application; how and where to submit applications; deadlines; and items that are eligible;
V. Application Review Information: Considerations and preferences; scoring criteria; review standards; and selection information;
VI. Award Administration Information: Award notice information and award recipient reporting requirements;
VII. Agency Contacts: Web, phone, fax, e-mail, and contact name.

I. Funding Opportunity

Drinking water systems are basic and vital to both health and economic development. Hurricanes Katrina, Rita, Ike and Wilma severely damaged water systems in the States of Florida, Alabama, Mississippi, Louisiana, and Texas. Without dependable water supply, rural communities in these states will not attract families and businesses to return and invest in the hurricane damaged communities.

The Rural Utilities Service (RUS) supports the sound development of rural communities and the growth of our economy without endangering the environment. RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need. The additional funding for Water Resource Studies will allow rural communities to better plan and secure dependable water supplies for rebuilding their

community's health and economic development. Qualified private non-profit organizations may apply to receive a grant to conduct water resource studies to evaluate sources of dependable water supplies for communities in the hurricane affected states.

II. Award Information

Available funds: $500,000 is available for grants in FY 2009.

III. Eligibility Information

A. What are the basic eligibility requirements for applying? (For more specific information see 7 CFR part 1775, section 1775.35.)

The applying entity (Applicant) must:

1. Be a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

2. Be legally established and located within one of the following:

a. A State within the United States;
b. The District of Columbia;
c. The Commonwealth of Puerto Rico;
d. The Commonwealth of the Northern Mariana Islands;
e. The Republic of the Marshall Islands;
f. The Federated States of Micronesia;
g. The Republic of Palau;
h. The U.S. Virgin Islands;

3. Have the legal capacity and authority to carry out the grant purpose;

4. Have no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt.

B. What are the basic eligibility requirements for a project?

The project must be a water resource study that will evaluate and recommend sources of dependable water supply that can be developed and used by rural communities in one or more of the hurricane affected states of Florida, Alabama, Mississippi, Louisiana, and Texas.

IV. Application and Submission Information

A. Where to get application information. The grant application guide, copies of necessary forms and samples, and the Technical Assistance Grants regulation (7 CFR 1775) are available from these sources:

- The Internet: *http://www.usda.gov/rus/water/*,
- *http://www.grants.gov*, or,
- For paper copies of these materials: Call (202) 720–9586

1. You may file an application in either paper or electronic format. Whether you file a paper or an electronic application, you will need a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. You must provide your DUNS number on the SF–424, ''Application for Federal Assistance.''

To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1–866–705–5711 or access the Web site *http://www.dunandbradstreet.com.* You will need the following information when requesting a DUNS number:

a. Legal Name of the Applicant;
b. Headquarters name and address of the Applicant;
c. The names under which the Applicant is doing business as (dba) or other name by which the organization is commonly recognized;
d. Physical address of the Applicant;
e. Mailing address (if separate from headquarters and/or physical address) of the Applicant;
f. Telephone number;
g. Contact name and title;
h. Number of employees at the physical location.

2. Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to the RUS receipt point set forth below. RUS will not accept applications by fax or e-mail. For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the June 29, 2009 to the following address: Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1548, Room 5145 South, Washington, DC 20250–1548.

The application and any materials sent with it become Federal records by law and cannot be returned to you.

3. For electronic applications, you must file an electronic application at the Web site: *http://www.grants.gov.* You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will need a DUNS number to access or register at any of the services. The registration processes may take several business days to complete. Follow the instructions at Grants.gov for registering and submitting an electronic application. RUS may request original signatures on electronically submitted documents later.

The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1–888–227–2423 or you may register Online at: *http://www.ccr.gov.*

The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov: *https://apply.grants.gov/OrcRegister.*

B. What constitutes a completed application?

1. To be considered for assistance, you must be an eligible entity and must submit a complete application by the deadline date. You must consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.

2. Applicants must complete and submit the following forms to apply for a Water Resource Study grant:

(a) Standard Form 424, ''Application for Federal Assistance.''

(b) Standard Form 424A, ''Budget Information—Non-Construction Programs.''

(c) Standard Form 424B, ''Assurances—Non-Construction Programs.''

(d) Standard Form LLL, ''Disclosure of Lobbying Activity.''

(e) Form RD 400–1, ''Equal Opportunity Agreement.''

(f) Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).

(g) Indirect Cost Rate Agreement (if applicable, applicant must include approved cost agreement rate schedule).

(h) Statement of Compliance for Title VI of the Civil Rights Act of 1964.

(i) SF LLL, ''Disclosure of Lobbying Activities'' (include only if grant is over $100,000).

(j) Certification regarding Forest Service grant.

3. All applications shall be accompanied by the following supporting documentation:

(a) Evidence of applicant's legal existence and authority in the form of:

(i) Certified copies of current authorizing and organizational documents for new applicants or former grantees where changes were made since the last legal opinion was obtained in conjunction with receipt of an RUS grant, or, certification that no changes

have been made in authorizing or organizing documents since receipt of last RUS grant by applicant.

(ii) Current annual corporation report, Certificate of Good Standing, or statement they are not required.

(iii) Certified list of directors/officers with their respective terms.

(b) Evidence of tax exempt status from the Internal Revenue Service (IRS), if applicable.

(c) Narrative of applicant's experience in providing services similar to those proposed.

(d) Provide brief description of successfully completed projects including the need that was identified and objectives accomplished.

(e) Latest financial information to show the applicant's financial capacity to carry out the proposed work. A current audit report is preferred; however applicants can submit a balance sheet and an income statement in lieu of an audit report.

(f) List of proposed services to be provided.

(g) Estimated breakdown of costs (direct and indirect) including those to be funded by grantee as well as other sources. Sufficient detail should be provided to permit the approval official to determine reasonableness, applicability, and allowability.

(h) Evidence that a Financial Management System is in place or proposed.

(i) Documentation on each of the priority ranking criteria listed in 7 CFR 1775, § 1775.11 as follows:

(i) List of the associations to be served and the State or States where assistance will be provided. Identify associations by name, or other characteristics such as size, income, location, and provide MHI and population.

(ii) Description of the type of technical assistance and/or training to be provided and the tasks to be contracted.

(iii) Description of how the project will be evaluated and provide clearly stated goals and the method proposed to measure the results that will be obtained.

(iv) Documentation of need for proposed service. Provide detailed explanation of how the proposed services differ from other similar services being provided in the same area.

(v) Personnel on staff or to be contracted to provide the service and their experience with similar projects.

(vi) Statement indicating the number of months it takes to complete the project or service.

(vii) Documentation on cost effectiveness of project. Provide the cost per association to be served or proposed cost of personnel to provide assistance.

(viii) Other factors for consideration such as emergency situation, training need identified, health or safety problems, geographic distribution, Rural Development Office recommendations,

4. Applicants must also submit a work plan/project proposal that will outline the project in sufficient detail to provide a reader with a complete understanding of how the proposed Water Resource Study will address the water supply needs of the study area. The proposal should cover the following elements (in addition to information contained in 7 CFR part 1775, sections 1775.10 and 1775.11):

a. Present a brief project overview. Explain the purpose of the project, how it relates to RUS' purposes, how you will carry out the project, what the project will produce, and who will direct it.

b. Describe why the project is necessary. Describe how eligible rural communities will benefit from the study. Describe the service area. Address water needs of rural communities within the study area.

c. Clearly state your study goals. Your objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the proposed Water Resource Study.

d. Project Evaluation. It should describe how the results will be evaluated, in line with the study's objectives.

e. In addition to completing the standard application forms, you must also submit supplementary materials, as follows:

(i). Demonstrate that your organization is legally recognized under state and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

(ii). Submit a certified list of directors and officers with their respective terms.

(iii). Submit evidence of tax-exempt status from the Internal Revenue Service.

(iv). You must disclose debarment and suspension information required in accordance with 7 CFR part 3017, § 3017.335, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Department of Agriculture?'' It is part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

(v). You must identify all of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 7 CFR part 3021, § 3021.230. The section heading is ''How and when must I identify workplaces?'' It is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

(vi). Submit the most recent audit of your organization.

V. Application Review Information

A. Within 30 days of receiving your application, RUS will acknowledge the application's receipt by letter to the Applicant. The application will be reviewed for completeness to determine if it contains all of the items required. If the application is incomplete or ineligible, RUS will return it to the Applicant with an explanation.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in paragraph C of this section.

C. All applications that are complete and eligible will be scored based on the criteria outlined in 7 CFR part 1775, § 1775.10 and § 1775.11. After each application is scored they will be ranked competitively. The categories for scoring criteria used are the following:

Scoring criteria	Points
1. Scope of assistance (national, multi-state, and single state/area).	Up to 10.
2. Degree of expertise	Up to 5.
3. Percentage of applicant's contributions.	Up to 10.
4. Applicant Resource (staff vs contract personnel).	Up to 10.
5. Needs Assessment: Extent that problems/issues are clearly defined and supported by data.	Up to 15.
6. Description of the service area, particularly the demographics of the rural communities being served (population and MHI of the communities).	Up to 25.
7. Goals/Objectives: Goals/objectives are clearly defined, are tied to need, and are measurable.	Up to 15.

Scoring criteria	Points
8. Extent to which the work plan clearly articulates a well thought out approach to accomplishing objectives; and clearly defines who will be served by the study.	Up to 40.
9. Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with expected project outcomes.	Up to 20.
10. Type of technical assistance applicant is providing.	Up to 20.
11. Project duration	Up to 5.

VI. Award Administration Information

A. RUS will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores and the availability of funding for the Water Resource Studies grants. Each applicant will be notified in writing of the score its application receives.

B. In making its decision about your application, RUS may determine that your application is:

1. Eligible and selected for funding;
2. Eligible but offered fewer funds than requested;
3. Eligible but not selected for funding; or
4. Ineligible for the grant.

C. In accordance with 7 CFR part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied RUS funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/offices.htm* or by calling (703) 305–1166.

D. Applicants selected for funding will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF–270, payment will ordinarily be made within 30 days.

3. Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to RUS Guide 1775–1 (Grant Agreement). Any change not approved may be cause for termination of the grant.

G. Project reporting.

1. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved.

2. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

3. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

4. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements as follows:

1. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the Grantee's statement of income and expense and balance sheet signed by an appropriate official of the Grantee. Financial statements will be submitted within 90 days after the grantee's fiscal year.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/water.* The RUS' Web site maintains up-to-date resources and contact information for Technical Assistance and Training Grants program.

B. Phone: 202–720–9586.

C. Fax: 202–690–0649.

D. E-mail: *anita.obrien@wdc.usda.gov.*

E. Main point of contact: Anita O'Brien, Loan Specialist, Water and Environmental Programs, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: May 1, 2009.

James R Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–12344 Filed 5–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache National Forest; Evanston-Mountain View Ranger District; Utah; Blacks Fork Salvage Project

AGENCY: Forest Service, USDA.

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

SUMMARY: The Evanston-Mountain View Ranger District of the Uinta-Wasatch-Cache National Forest proposes to treat about 3,000 acres of a variety of vegetation types within the 39,800 acre Blacks Fork project area, located in Summit County, Utah approximately 20 miles southeast of Evanston, Wyoming. Proposed treatments include timber harvest, prescribed fire, and mechanical thinning. This proposal is being developed in direct response to the continuing mountain pine beetle epidemic in the area and its potential long-term impacts on the Blacks Fork area.

DATES: Comments concerning the scope of the analysis must be received by June 24, 2009. The draft environmental impact statement is expected November 2009 and the final environmental impact statement is expected March 2010.

ADDRESSES: Send written comments to: Blacks Fork Salvage Project, Attn: Stephen Ryberg, P.O. Box 1880, Evanston, WY 82931. Comments can also be hand delivered Monday through Friday 8 to 4:30 at the following address: 1565 Highway 150 suite A located in Evanston, Wyoming. In addition, comments can be submitted electronically to: *comments-intermtn-wasatch-cache-evanston-mtnview@fs.fed.us* or submitted via facsimile to 307–789–8639.

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

articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

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

FOR FURTHER INFORMATION CONTACT: Stephen Ryberg, District Ranger or Amy Barker, Environmental Coordinator at 307–789–3194.

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

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose of this project is to salvage dead lodgepole pine. Associated with this site is the removal of mistletoe infested trees within the treatment units which will prevent infection onto the lodgepole pine that will regenerate in the salvaged openings. The need for action now is due to the ongoing mountain pine beetle epidemic and resulting mortality. Trees rapidly lose value as sawtimber once they are dead and begin to dry and decay. Salvaging dead conifers will provide commercial timber that contributes to a sustainable level of goods and services within area communities. The Wasatch-Cache Revised Forest Plan (2003) directs the use of timber harvest where allowed, to contribute to the economy while achieving properly functioning conditions of vegetation and watersheds.

A second purpose of this project is to provide wildlife habitat improvements to aspen, willow, and lodgepole habitat components. There is concern about the loss of aspen to conifer encroachment adjacent to riparian areas, wetlands, and beaver ponds. Stimulating aspen regeneration via salvage harvest and/or prescribed fire will improve beaver habitat, riparian hardwood health, and wetland hydrologic functions. There is a need to treat willow to increase vigor and age class diversity to improve wildlife browse. Salvaged lodgepole pine units will regenerate evenly to create large and dense lodgepole pine stands for future goshawk habitat.

A third purpose of this project is to reduce overall fuel loadings in treated stands. This reduction in fuel loading within treated stands is expected to result in a more patchy mosaic of burn conditions (compared to large expanses of heavy fuels across the landscape) for future wildfires, producing a more resilient landscape. Defensible space/fuel breaks created around or on the upwind side of the developed sites at the Lyman Lake Youth Camp, access road, and campground will alter local fire behavior and help alleviate concerns regarding protection of structures and visitors in the event of a wildfire. Salvaging lodgepole pine in the units adjacent to these developments and treating the resulting slash will further modify large fire behavior in this general vicinity.

Proposed Action

The proposed project includes treatment over approximately 3,000 acres of aspen, mixed aspen/lodgepole, and willow communities using timber harvest, prescribed fire, and mechanical fuels treatments.

Timber salvage harvest would be used over approximately 1,880 acres of the lodgepole pine and mixed lodgepole pine/aspen. Salvage of the dead and removal of the beetle infested and/or dwarf mistletoe infected trees would result in treatments with essentially all but the snags removed. Snags would be left in clumps and islands to keep them wind firm and intact. Regeneration of lodgepole pine and/or aspen can be expected within the treatment units.

Approximately 560 acres (primarily aspen-conifer communities) of the 1,880 salvage acres described previously would also be treated with prescribed fire in a mosaic pattern following the timber harvest. This will help stimulate aspen regeneration by causing at least 60% mortality in the aspen overstory. Slash from the logging operations would create a fuel bed sufficient to carry the fire.

Approximately 980 acres of the mixed aspen and conifer type would be burned, in a mosaic pattern to stimulate aspen and mixed aspen/lodgepole regeneration in patches. Approximately 40% to 80% of these acres would be burned with sufficient intensity to create these patches. A focus in this is to burn areas near old beaver ponds to recreate favorable habitat conditions and restore hydrologic function in these areas.

Approximately 90 acres of willow, along the river's edge would be treated with fire to create openings and patches for young willows to become established.

Approximately 50 acres near Lyman Lake campground and youth camp will be treated by thinning, hand felling, and piling of ladder fuels and dead wood to create defensible space/fuelbreaks. This is likely to be mostly small, non-commercial material, but there may be some commercial size trees treated as well (such as larger trees overhanging buildings).

The Blacks Fork project area has a fairly extensive road system in place and most of the general treatment areas are accessible. However, approximately 12.0 miles of temporary roads may be constructed to access specific treatment units. Of the 12.0 miles, about 3.0 miles are old logging roads (2 track) that are not considered system roads. While these are considered new construction, analysis should recognize that the prism is in place and construction thus will result in less soil disturbance. Following treatments, all temporary roads would be obliterated, the road prism returned to contour, and the surface revegetated. Surface roughening and slash will be used on the obliterated sections to reduce erosion potential while vegetation becomes established.

Approximately 1.1 miles of FS Road #80064 that is currently open to four wheel drive traffic would be improved to accommodate salvage logging traffic. Approximately 1.2 miles of the Brush Creek Road (#8 1657) would be also used. Approximately 3.0 miles of the Horse Creek Road (#885 13) and 0.7 miles of Road #84090 would also be improved and used.

The Brush Creek portion of the analysis area contains mixed National Forest System land and private land ownership. Access to this area has been via an old decaying wood bridge which was overlaid with a newer railcar bridge in 2001. The Brush Creek road was built by private parties roughly 40 years ago to access their lands south of the West Fork Blacks Fork, however, they constructed the bridge and portions of their access road on National Forest System lands. While the area is currently accessable using the railcar bridge, this type of bridge is not an engineered structure and thus cannot be certified by Forest Service engineers as safe for travel. Until it is replaced with a permanent engineer rated bridge, proper easements cannot be executed between the private landowner and the Forest Service to provide legal access to the area. The current location of the bridge abutments constrain water flow in the West Fork Blacks Fork channel resulting in downstream erosion of the south bank. These abutments are rotting

and the original wooden bridge stringers and deck are beginning to fall into the stream channel. Constructing the bridge so the structure does not impede water flow, particularily during periods of high water, will be beneficial to the aquatic habitats. As part of the proposed action the West Fork Blacks Fork bridge will be replaced to provide access to salvage the lodgepole pine stands in Section 18, which are heavily infested by mountain pine beetles. Over the long term, it would provide access for the private property owner while allowing fire access, and other types of administrative uses on the National Forest by the Forest Service. This road has been gated for many years and this would continue if the bridge were replaced. The road would be periodically maintained to prevent erosion and deterioration of the road prism. The execution of easements would establish legal access and also provide for future maintenance.

There are five basic techniques that will be used to contain prescribed fire in the treatment units. Fire will be used alone or in conjunction with commercial timber harvest to achieve a mosaic of burned and unburned patches within some of the units. Specific methods of line control will be specified in the burn plan. Construction of line will use the minimum necessary disturbance. The following estimates of miles of each kind of fire line are approximate, but represent the upper end (most line construction) for control lines. It is likely that firing techniques will be utilized more and constructed lines less than the estimates given.

At least 3.9 miles of unit perimeter will utilize terrain features in conjunction with the firing patterns to selectively burn portions of the units. Natural features such as rock outcrops, openings, and wet riparian/stream corridors, will serve as anchors for utilizing firing techniques. In particular, Blacks Fork will function as the west fireline for most of the eastern burn unit. Created features such as areas where timber has been harvested may also be appropriate for control lines, depending on fuel conditions.

Up to about 0.3 miles of handline (averaging 24 to 36 inches wide and cleared to mineral soil) will be built and rehabilitated. Where vegetation is short and light, such as in sage and grass, fireline constructed by hand will be used to anchor the burning. Line will be appropriately rehabilitated (by mulching, seeding, and/or water barring, as needed) following completion of the burning to prevent erosion.

Approximately 1.0 miles of machine line could be used. Heavy equipment will be used to construct fireline where fuels are larger than feasible for handline, and natural features/firing techniques are not adequate for control. Line will average 72 to 96 inches in width and be cleared to mineral soil. Possible equipment includes (but is not limited to) bulldozers, rubber tired skidders, trail cats, and tracked excavators. Following burning, the lines will be rehabilitated (seeded and water barred as needed, and where available woody debris may be scattered along for microsite protection).

Approximately 0.9 miles of skid trails (including incidental machine line) will be used as fire containment lines. In timber sale units that have burning as secondary treatments skid trails for log removal will be placed along the perimeter and used also for containment of the fire. Skid trails are generally about 96 inches in width and have mineral soil exposed throughout much of their surface. As in the machine line, these will be rehabilitated following burning to prevent erosion. In small portions where it is not feasible to skid along the boundary then machine line will be built.

Approximately 4.1 miles of Forest System Road will be used for fire containment. Where existing roads coincide with burn unit boundaries these will be used as fire lines, such as along the eastern boundary of the eastern burn unit.

Possible Alternatives

In addition to the Proposed Action, a no action alternative will be considered. This alternative would simply continue current management without the actions of this proposal. Other alternatives may be developed in response to issues generated during the scoping process.

Responsible Official

Evanston-Mountain View District Ranger.

Nature of Decision To Be Made

The decision to be made is whether or not to implement vegetation treatments in the Blacks Fork project area, and if so, to what degree and where.

Preliminary Issues

Preliminary issues are the effects of treatments on wildlife habitat, and the effects of insect and disease outbreaks on current forest health.

Scoping Process

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

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: May 19, 2009.

Stephen M. Ryberg,

District Ranger.

[FR Doc. E9–12124 Filed 5–27–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Dairyland Power Cooperative, Inc.: Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Scoping Meetings

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Scoping Meetings.

SUMMARY: The Rural Utilities Service (RUS) intends to prepare an Environmental Impact Statement (EIS) and hold public scoping meetings and in connection with possible impacts related to a project proposed by Dairyland Power Cooperative in the CapX 2020 Hampton-Rochester-La Crosse Transmission Line Project. The proposal consists of the construction of a 345-kilovolt (kV) transmission line and associated infrastructure between Hampton, Minnesota and the La Crosse area in Wisconsin. The project also includes construction of new 161-kV transmission lines and associated facilities in the area of Rochester, Minnesota. The total length of 345-kV and 161-kV transmission lines associated with the proposed project will be approximately 150 miles. Proposed and alternate transmission segments and locations for proposed and alternate associated facilities have been identified by Dairyland Power Cooperative. Dairyland Power Cooperative is requesting RUS to provide financing for its portion of the proposed project.

DATES: RUS will conduct six public scoping meetings in an open-house format followed by a discussion period:

June 16, 2009, Plainview-Elgin-Millville High School, 500 West Broadway, Plainview, Minnesota; June 17, 2009, Wanamingo Community Center, 401 Main Street, Wanamingo, Minnesota; June 18, 2009, City of St. Charles Community Meeting Room, 830 Whitewater Avenue, St. Charles, Minnesota; June 23, 2009, La Crescent American Legion, 509 N. Chestnut, La Crescent, Minnesota; June 24, 2009, Centerville/Town of Trempealeau Community Center, W24854 State Road 54/93, Galesville, Wisconsin; and June 25, 2009, Cochrane-Fountain City High School, S2770 State Road 35, Fountain City, Wisconsin. All meetings will be held between 6–8:00 PM local time. Comments regarding the proposed project may be submitted (orally or in writing) at the public scoping meetings or in writing to RUS at the address listed in this notice no later than June 29, 2009.

ADDRESSES: To send comments or for further information, contact Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, telephone: (202) 720–0468 or e-mail: *stephanie.strength@usda.gov*.

An Alternative Evaluation Study (AES) and Macro Corridor Study (MCS), prepared by Dairyland Power Cooperative, will be presented at the public scoping meetings. The reports are available for public review at the RUS address provided in this notice and at Dairyland Power Cooperative, 3251 East Avenue, South, La Crosse, WI 54602. In Addition, the reports will be available at RUS' Web site, *http://www.usda.gov/rus/water/ees/eis.htm* and at the following repositories:

Alma Public Library, 312 North Main Street, Alma, WI 54610, Phone: 608–685–3823.

Arcadia Public Library, 406 E Main Street, Arcadia, WI 54612, Phone: 608–323–7505.

Blair-Preston Library, 122 Urberg Street, Blair, WI 54616, Phone: 608–989–2502.

Campbell Library, 2219 Bainbridge Street, La Crosse, WI 54603, Phone: 608–783–0052.

Cannon Falls Library, 306 West Mill Street, Cannon Falls, MN 55009, Phone: 507–263–2804.

Dairyland Power Cooperative, 500 Old State Highway 35, Alma, WI 54610, Phone: 608–685–4497.

Galesville Public Library, 16787 South Main Street, Galesville, WI 54630, Phone: 608–582–2552.

Hokah Public Library, 57 Main Street, Hokah, MN 55941, Phone: 507–894–2665.

Holmen Area Library, 16787 South Main Street, Galesville, WI 54630, Phone: 608–526–4198.

Kenyon Public Library, 709 2nd Street, Kenyon, MN 55946, Phone: 507–789–6821.

Riverland Energy Cooperative, N28988 State Road 93, Arcadia, WI 54612, Phone: 608–323–3381.

Rochester Public Library, 101 2nd Street SE., Rochester, MN 55963, Phone: 507–328–2309.

Shirley M. Wright Memorial Library, 11455 Fremont Street, Trempealeau, WI 54650, Phone: 608–534–6197.

St. Charles Public Library, 125 W 11th Street, St. Charles, MN 55927, Phone: 507–932–3227.

Tri-County Electric, 31110 Cooperative Way, Rushford, MN 55971, Phone: 507–864–7783.

La Crescent Public Library, 321 Main Street, La Crescent, MN 55947, Phone: 507–895–4047.

La Crosse Public Library, 800 Main Street, La Crosse, WI 54601, Phone: 608–789–7109.

Onalaska Public Library, 741 Oak Avenue, South, Onalaska, WI 54650, Phone: 608–781–9568.

People's Cooperative Services, 3935 Hwy 14 E, Rochester, MN 55903, Phone: 507–288–4004.

Plainview Public Library, 115 SE 3rd Street, Pine Island, MN 55963, Phone: 507–534–3425.

Van Horn Public Library, 115 SE 3rd Street, Pine Island, MN 55963, Phone: 507–356–8558.

Winona Public Library, 151 West 5th Street, Winona, MN 55987, Phone: 507–452–4582.

Xcel Energy, 5050 Service Drive, Winona, MN 55987, Phone: 800–422–0782.

Xcel Energy, 1414 West Hamilton Avenue, Eau Claire, WI 54701, Phone: 715–839–2621.

Zumbrota Public Library, 100 West Avenue, Zumbrota, MN 55992, Phone: 507–732–5211.

SUPPLEMENTARY INFORMATION: Preliminary proposed transmission line corridors and siting areas for substations have been identified. The EIS will address the construction, operation, and management of the proposed project, which includes a 345-kV transmission line and associated infrastructure between Hampton, Minnesota and the La Crosse area of Wisconsin; 161-kV transmission lines in the vicinity of Rochester, Minnesota; construction and maintenance of access roads for all proposed transmission lines; construction of up to three new substations, and expansion of up to three existing substations. Total length of the transmission lines for the proposed project will be approximately 150 miles. The project study area includes part or all of the following counties in Minnesota: Dakota, Goodhue, Wabasha, Winona, Houston, Olmsted, Rice, and Dodge. In Wisconsin, the project area includes parts of the following counties: La Crosse, Trempealeau, and Buffalo.

Among the alternatives RUS will address in the EIS is the No Action alternative, under which the project would not be undertaken. In the EIS, the effects of the proposed project will be compared to the existing conditions in the area affected. Alternative transmission line corridors and substation locations will be refined as part of the EIS scoping process and will be addressed in the Draft EIS. RUS will carefully study public health and safety, environmental impacts, and engineering aspects of the proposed project and all related facilities.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of the Draft EIS. The Draft EIS will be available for review and comment for 45 days. A Final EIS that considers all comments received will subsequently be prepared. The Final EIS will be available for review and comment for 30 days. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft EIS, the Final EIS, and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant federal, state, and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR part 1794).

Dated: May 22, 2009.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Utilities Service.

[FR Doc. E9–12407 Filed 5–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc County Resource Advisory Committee, Alturas, CA, 96101, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 110–343) the Modoc National Forest's Modoc County Resource Advisory Committee will meet June 1, 2009, August 3, 2009, and September 14, 2009, in Alturas, California 96101, for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meetings on June 1, August 3, and September 14, 2009, will begin at 6 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California 96101. Agenda topics include (1) presentations on active RAC projects, (2) financial updates, and (3) reviewing and voting on project proposals that meet the intent of Public Law 110–343. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Rural Development and Partnership Specialist Dina McElwain at (530) 233–8723.

Jim C. Gumm,

Public Affairs Officer.

[FR Doc. E9–11900 Filed 5–27–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Soil and Water Resources Conservation Act (RCA); Meetings

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture (USDA).

ACTION: Notice of public meetings.

SUMMARY: NRCS will hold public meetings to gather stakeholder input on important natural resource concerns and program approaches to address these natural resource concerns in the next decade.

On June 22, 2008, Congress reauthorized the RCA, 16 U.S.C. 2001–2009, through amendments in the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). In the reauthorization, Congress extended RCA through 2018 and called for the first report to be delivered to Congress by January 2011. RCA provides USDA with broad strategic assessment and planning authority and calls for the development of a national program to guide USDA activities for the conservation, protection, and enhancement of soil, water, and related natural resources. Through RCA, USDA appraises the status and trends of soil, water, and related resources on non-Federal land, assesses their capability to meet present and future demands, evaluates current and needed programs, policies, and authorities, and develops a national soil and water conservation program to give direction for USDA soil and water conservation activities.

Public participation is a central element of the RCA process. USDA will hold listening sessions to provide the public with an opportunity to comment on conservation priorities, program approaches, future conservation needs, and opportunities to improve the appraisal process.

DATES: The meetings will be held on the following dates at the following locations:

Meeting location	Date	Local time	Co-host
Ramkota Hotel, 800 S.Third Street, Bismarck, North Dakota 58504–5728.	June 15	10:30–12:30	National Association of Conservation Districts—Northern Plains Regional Meeting.
Albuquerque Convention Center, 401 Second Street, Albuquerque, New Mexico 87012.	June 15	2:30–4:30	National Association of Resource Conservation and Development Councils—National Conference.
Holiday Inn Select, 155 Holiday Drive, Solomons, Maryland 20688.	July 27	1:45–3:30	National Association of Conservation Districts—Northeast Regional Meeting.

FOR FURTHER INFORMATION CONTACT: Patty Lawrence, Director, Strategic and Performance Planning Division, NRCS, Post Office Box 2890, Washington, DC 20013; telephone: (202) 690–0467; or fax: (202) 720–3057. Submit electronic requests for additional information to *RCA@wdc.usda.gov.*

Signed in Washington, DC on May 20, 2009.

Dave White,

Chief.

[FR Doc. E9–12340 Filed 5–27–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Construction Investments.

OMB Control Number: 0610–0096.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 600.

Average Hours per Response: 14.

Burden Hours: 8,400.

Needs and Uses: EDA investments under the Public Works and Economic Adjustment Programs help distressed communities revitalize and upgrade their physical infrastructure and economic development facilities. Grants are awarded to eligible applicants to promote long-range economic development in order to reduce unemployment, and increase income. The grants are used to design, build, improve or expand vital public infrastructure and economic development facilities. These facilities, in turn, help regions to attract new, or support existing businesses that will result in an environment where higher-skilled, higher-wage jobs are created. EDA regulations at 13 CFR part 305 include program requirements that are unique to construction awards. In some cases, these involve reporting or record keeping requirements.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; not-for-profit institutions; business or other for-profit organizations; individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Sharon Mar, (202) 395–6466.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Sharon Mar, OMB Desk Officer, FAX number (202) 395–5167, or *Sharon_Mar@omb.eop.gov*.

Dated: May 22, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12354 Filed 5–27–09; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Request to Amend a Project and Project Service Maps.

OMB Control Number: 0610–0102.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 632.

Average Hours Per Response: 2.

Burden Hours: 1,242.

Needs and Uses: A recipient of an investment award must submit a written request to EDA to amend the award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award. EDA may require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; not for-profit institutions; business or other for-profit organizations; individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer:

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Sharon Mar, OMB Desk Officer, FAX number (202) 395–5167, or *Sharon_Mar@omb.eop.gov*.

Dated: May 22, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12355 Filed 5–27–09; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Property Management.

OMB Control Number: 0610–0103.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 150.

Average Hours per Response: 2 hours and 45 minutes.

Burden Hours: 413.

Needs and Uses: An investment assistance recipient must request, in writing, EDA's approval to undertake an incidental use of property acquired or improved with EDA investment assistance. This collection of information allows EDA to determine whether an incidental use of property acquired or improved with EDA investment assistance is appropriate. If a recipient wishes for EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA and disclose to EDA the intended future use of the real property or the tangible personal property for which the release is requested. This collection of information allows EDA to determine whether to release its real property or tangible personal property interests.

Affected Public: State and local governments; Indian Tribes; institutions of higher education; not-for-profit institutions; business or other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Sharon Mar, (202) 395–6466.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Sharon Mar, OMB Desk Officer, FAX number (202) 395–5167, or *Sharon_Mar@omb.eop.gov*.

Dated: May 22, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12356 Filed 5–27–09; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 22–2009)

Foreign–Trade Zone 203 Moses Lake, Washington, Application for Subzone, REC Silicon (Polysilicon and Silane Gas), Moses Lake, Washington

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Port of Moses Lake Public Corporation, grantee of FTZ 203, requesting special–purpose subzone status for the polysilicon and silane gas manufacturing facility of REC Silicon, located in Moses Lake, Washington. 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 May 21, 2009.

The REC Silicon facility (425 employees, 219 acres, 10,500 metric ton

capacity) is located at 3322 Road ''N'' NE, Moses Lake, Washington. The facility is used for the manufacturing and warehousing of solar grade polysilicon and silane gas using domestic and imported silicon metal (duty rate ranges from 5.3–5.5%). Pursuant to Section 400.33 of the Board's regulations, any silicon metal subject to antidumping or countervailing duties would be required to be admitted to the subzone in privileged foreign status (19 CFR 146.41).

FTZ procedures could exempt REC Silicon from customs duty payments on the silicon metal used in export production. The company anticipates that over 95% of polysilicon and 90% of silane gas shipped from the plant will be exported. On its domestic sales, REC Silicon would be able to choose the duty rates during customs entry procedures that apply to polysilicon and silane gas (duty rate ranges from duty–free to 3.7%) for the foreign inputs noted above. FTZ designation would further allow REC Silicon to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to investigate the application and report 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 July 27, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 11, 2009.

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 Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: May 21, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–12456 Filed 5–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1622]

Approval of Manufacturing Authority Within Foreign-Trade Zone 50 Long Beach, CA; Phoenix MC, Inc. d/b/a Phoenix Motorcars, Inc. (Motor Vehicles)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board of Harbor Commissioners of the Port of Long Beach, grantee of FTZ 50, has requested authority under Section 400.28(a)(2) of the Board's regulations on behalf of Phoenix MC, Inc. d/b/a Phoenix Motorcars, Inc., to assemble light-duty passenger electric vehicles under FTZ procedures within FTZ 50—Site 2, Ontario, California (FTZ Docket 40–2008, filed 6–13–2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 34916, 6–19–2008);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for the assembly of light-duty passenger electric vehicles within FTZ 50 for Phoenix MC, Inc. d/b/a Phoenix Motorcars, Inc., as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of May 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–12404 Filed 5–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Preliminary Results of the 12th (2007) Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2007, through December 31, 2007. We preliminarily find that De Matteis Agroalimentare S.p.A. (''De Matteis'') received countervailable subsidies. *See* the ''Preliminary Results of Review'' section, below. Interested parties are invited to comment on these preliminary results. *See* the ''Public Comment'' section of this notice.

DATES: *Effective Date:* May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Shelly Atkinson, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182 and (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published a countervailing duty order on certain pasta (''pasta'' or ''subject merchandise'') from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 11, 2008, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2007, the period of review (''POR''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 39948 (July 11, 2008). On July 28, 2008, we received such a request from F.lli De Cecco di Filippo Fara San Martino S.p.A. (''De Cecco''). On July 31, 2008, we received a request for review from De Matteis. On July 31, 2008, we received a request for review from petitioners New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company for De Matteis. In accordance with 19 CFR 351.221(c)(1)(i), we

published a notice of initiation of this review on August 26, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008).

On September 15, 2008, we issued countervailing duty questionnaires to the Commission of the European Union (''EU''), the Government of Italy (''GOI''), De Matteis, and De Cecco. We received responses to our questionnaires in October and November 2008. On December 22, 2008, De Cecco withdrew its request for review. On January 27, 2009, we rescinded the review with respect to De Cecco. *See Certain Pasta From Italy: Notice of Partial Rescission of Twelfth (2007) Countervailing Duty Administrative Review*, 74 FR 4734 (January 27, 2009).

We issued supplemental questionnaires to De Matteis and the GOI in December 2008, January 2009, and March 2009, and we received responses to our supplemental questionnaires in December 2008, February 2009, March 2009, and April 2009.

Period of Review

The POR for which we are measuring subsidies is January 1, 2007, through December 31, 2007.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from the order. *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room 1117 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale are also excluded from the order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy'' which is on file in the Department's CRU.

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling finding that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is on file in the CRU.

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is on file in the CRU.

(4) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.225(b). *See Certain Pasta From Italy: Notice of Initiation of Anti-Circumvention Inquiry on the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti-circumvention inquiry. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), benefits from non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. The Department's regulations create a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''IRS Tables''). See 19 CFR 351.524(d)(2). For pasta, the IRS Tables prescribe an AUL of 12 years. None of the responding companies or other interested parties objected to this allocation period. Therefore, we have used a 12-year allocation period.

Attribution of Subsidies

Pursuant to 19 CFR 351.525(b)(6), the Department will attribute subsidies received by certain companies to the combined sales of those companies. Based on our review of the responses, we preliminarily find that ''cross-ownership'' exists with respect to the respondent company. De Matteis has reported that it is affiliated with De Matteis Construzioni S.r.L. (''Construzioni'') by virtue of being 100 percent owned by Construzioni. *See* De Matteis's October 22, 2008, questionnaire response (''De Matteis's

QR'') at 2–3. De Matteis has reported that Construzioni did not receive any subsidies during the POR or AUL period. *See generally* De Matteis's QR. Therefore, we are attributing De Matteis's subsidies to its sales only.

Discount Rates

For discount rates, the respondent company did not take out any loans in the years in which the GOI agreed to provide the subsidies in question. Therefore, pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average cost of long-term, fixed-rate loans to allocate non-recurring benefits over time.

Consistent with past practice in this proceeding, for grants approved in 1995–2004, we used the Italian Bankers' Association (''ABI'') prime interest rate (as reported by the Bank of Italy), increased by the mark-up an Italian commercial bank would charge a corporate customer and an amount for bank charges. *See*, *e.g.*, *Certain Pasta From Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review*, 70 FR 17971 (April 8, 2005); unchanged in *Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005). The Bank of Italy ceased reporting this rate starting in 2004. Because the ABI prime rate was no longer reported after 2004, for grants approved in 2005–2007, we have used the ''Bank Interest Rates on Euro Loans: Outstanding Amounts, Non-Financial Corporations, Loans With Original Maturity More Than Five Years'' published by the Bank of Italy and provided by the GOI in its October 22, 2008, questionnaire response (''GOI QR'') at Exhibit 5. We increased this rate by the mark-up and bank charges described above.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (*see* section I.B., below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993. De Matteis received grants under Law 64/86 that conferred a benefit during the POR.

In the *Pasta Investigation*,[1] the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* Section 771(5)(D)(i) of the Act; *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.

As stated in *Live Swine from Canada*,[2] ''it is well-established that where the Department has determined that a program is * * * countervailable, it is the Department's policy not to re-examine the issue of that program's countervailability in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration.'' Also, this policy is reflected in the Department's standard questionnaire used in countervailing duty administrative reviews which states that ''absent new information or evidence of changed circumstances, we do not intend to reexamine the countervailability of programs previously found to be countervailable.''[3]

In this review, neither the GOI nor the respondent company has provided new information that would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the *Pasta Investigation*, the Department treated the industrial development grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. Therefore, we have followed the methodology described in 19 CFR 351.524(b)(2), which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is countervailed in full (''expensed'') in the year of receipt. We determine that grants received by De Matteis under Law 64/86 exceeded 0.5 percent of its sales in the year in which the grants were approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit from those grants. We divided the benefit received by De Matteis in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 0.03 percent *ad valorem* for De Matteis. *See* Memorandum to the File, ''2007 Preliminary Results Calculation Memorandum for De Matteis Agroalimentare S.p.A.,'' dated May 21, 2009 (''De Matteis Preliminary Calc Memo'').

B. Industrial Development Grants Under Law 488/92

In 1986, the EU initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) areas by the EU. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants.

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, *etc.* Grants are then made based on this ranking. De Matteis received grants under Law 488/92 that conferred a benefit during the POR.

[1] *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 30288 (June 14, 1996) (''*Pasta Investigation*'').

[2] *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408, 52420 (October 7, 1996).

[3] *See* Department's September 15, 2008, letter to the Embassy of Italy, at enclosure.

In the *Second Administrative Review*,[4] the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* Section 771(5)(D)(i) of the Act; *see also* 19 CFR 351.504(a). Also, these grants were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the GOI nor the respondent company has provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies. *See Live Swine from Canada*, 61 FR at 52420.

In the *Second Administrative Review*, the Department treated the industrial development grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. Therefore, we have followed the methodology described in 19 CFR 351.524(b)(2) which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. We determine that grants received by De Matteis under Law 488/92 exceeded 0.5 percent of its sales in the year in which the grants were approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits over time. We divided the benefit received by De Matteis in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.76 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

C. European Regional Development Fund (''ERDF'') Programma Operativo Plurifondo (''P.O.P.'') Grant

The ERDF is one of the EU's Structural Funds. It was created pursuant to the authority in Article 130 of the Treaty of Rome to reduce regional disparities in socio-economic performance within the EU. The ERDF program provides grants to companies located within regions that meet the criteria, as described above, of Objective 1, Objective 2, or Objective 5(b) under the Structural Funds.

De Matteis received a P.O.P. grant from the Regione Campania in 1998.[5] The P.O.P. grant was funded by the EU, the GOI, and the Regione Campania.

In the *Pasta Investigation*, the Department determined that the ERDF P.O.P. grant confers a countervailable subsidy within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* Section 771(5)(D)(i) of the Act; *see also* 19 CFR 351.504(a). Also, this grant was found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act. In this review, neither the EU, the GOI, nor the respondent company has provided new information which would warrant reconsideration of our determination that ERDF grants are countervailable subsidies. *See Live Swine from Canada*, 61 FR at 52420.

In the *Pasta Investigation*, the Department treated ERDF grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. In accordance with 19 CFR 351.524(b)(2), we determined that the ERDF P.O.P. grant received by De Matteis exceeded 0.5 percent of its sales in the year in which the grant was approved, as was the case in the *Fourth Administrative Review.*

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits over time. We divided the benefit received by De Matteis in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the ERDF P.O.P. grant to be 0.03 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

D. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions from and reductions of payroll contributions that employers make to the Italian social security system for health care benefits, pensions, *etc.* The *sgravi* benefits are regulated by a complex set of laws and regulations, and are sometimes linked to conditions such as creating more jobs. We have found in past segments of this proceeding that benefits under some of these laws (*e.g.*, Laws 183/76, 449/97, and 223/91) are available only to companies located in the Mezzogiorno and other disadvantaged regions. Certain other laws (*e.g.*, Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the Mezzogiorno and other disadvantaged regions than for companies in other parts of the country. Still, other laws provide benefits that are not linked to any region.

In the *Pasta Investigation* and subsequent reviews, the Department determined that certain types of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies. *See* Section 771(5)(D)(ii) of the Act. Also, they were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they were limited to companies in the Mezzogiorno or because the higher levels of benefits were limited to companies in the Mezzogiorno.

In the instant review, no party in this proceeding challenged our past determinations in the *Pasta Investigation* and subsequent reviews that *sgravi* benefits, generally, were countervailable for companies located within the Mezzogiorno. *See Live Swine from Canada*, 61 FR at 52420. However, the GOI has submitted information claiming that benefits provided under Articles 8 and 25 of Law 223/91 and Leg. Decree 276/03 should be found not countervailable. *See* GOI's February 18, 2009 supplemental questionnaire response (''SQR'') at 2–13 and Exhibits n. 2a–2h; *see also* GOI's March 23, 2009 SQR; *see also* GOI's April 9, 2009 SQR at 1–2.

The laws under which *sgravi* benefits were provided during the POR are the following: Law 196/97 and Law 407/90.

(1) Law 196/97

Law 196/97 is closely related to Law 863/84. *See* section IV.A.1 below for a discussion of Law 863/84. Law 196/97 provides additional exemptions for employers in the Mezzogiorno that hire employees under ''skilling'' contracts on a long-term (or permanent) basis. As discussed below, skilling contracts under Law 863/84 occur when a company hires a worker under a non-renewable contract with a term of 24 months or less and the contract includes an educational or training component.

[4] *See Certain Pasta From Italy: Preliminary Results of Countervailing Duty Administrative Review*, 64 FR 17618 (April 12, 1999) (''*Second Administrative Review*''); *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999).

[5] *See Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 66 FR 40987 (August 6, 2001) (''*Fourth Administrative Review*''); unchanged in *Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001).

Law 196/97 permits such employers a total exemption from social security contributions for an additional 12-month period. Benefits from Law 196/97 could only be requested after an employee had participated in a 24-month skilling contract under Law 863/84. As noted below in the discussion of Law 863/84, no new skilling contracts under Law 863/84 could be made after October 31, 2004. However, the last possible date to request exemptions under Law 196/97 was October 31, 2006. Moreover, because the exemption granted under Law 196/97 only lasts for 12 months, benefits were set to expire by October 31, 2007.

In the Fourth Administrative Review, we determined Law 196/97 confers a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes is revenue forgone that is otherwise due and is, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act . The benefit is the amount of the tax savings in accordance with 19 CFR 351.509(a). Additionally, the program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because benefits are limited to companies in the Mezzogiorno.

In accordance with 19 CFR 351.524(c) and consistent with our methodology in the *Pasta Investigation* and in subsequent administrative reviews, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided De Matteis's savings in social security contributions during the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 196/97 to be 0.01 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

Because benefits expired during the POR, we preliminary determine that Law 196/97 has been terminated during the POR and there will be no subsidy benefits from this program after the POR. Further, there is no indication of any substitute or replacement program.

(2) Law 407/90

Law 407/90 grants an exemption from social security taxes for three years when a company hires a worker who (1) has received wage supplementation for a period of at least two years, or (2) has been previously unemployed for a period of two years. A 100-percent exemption is allowed for companies in the Mezzogiorno, while companies located in the rest of Italy receive a 50-percent reduction.

In the *Pasta Investigation*, we determined Law 407/90 confers a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes is revenue forgone that is otherwise due and is, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. The benefit is the difference in the amount of the tax savings between companies located in the Mezzogiorno and companies located in the rest of Italy in accordance with 19 CFR 351.509(a). Additionally, the program is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because higher levels of benefits are limited to companies in the Mezzogiorno.

In accordance with 19 CFR 351.524(c) and consistent with our methodology in the *Pasta Investigation* and in subsequent administrative reviews, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy for De Matteis, we divided the difference during the POR between the savings for the respondent company located in the Mezzogiorno and the savings a company located in the rest of Italy would have received. This amount was divided by De Matteis's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 407/90 to be 0.01 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

E. Law 289/02

(1) Article 62—Investments in Disadvantaged Areas

Article 62 of Law 289/02 provides a benefit in the form of a credit towards direct taxes, indirect taxes, or social security contributions. The credit must be used within three years. The law was established to promote investment in disadvantaged areas by providing credits to companies that undertake new investment by purchasing capital goods, equipment, patents, licenses, or ''know how.'' The granting of new benefits under Article 62 of Law 289/02 expired as of December 31, 2006, but the credits obtained prior to this date may be used in future years.

In the *Tenth Administrative Review*,[6] we determined that Article 62 of Law 289/02 confers a countervailable subsidy. The credits are a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because they represent revenue foregone that is otherwise due to the GOI, and a benefit is conferred in the amount of the tax savings in accordance with 19 CFR 351.509(a). Finally, the program is specific within the meaning of 751(5A)(D)(iv) of the Act because it is limited to certain geographical regions in Italy, specifically, the regions of Calabria, Campania, Basilicata, Pugilia, Sicilia, and Sardegna, and certain municipalities in the Abruzzo and Molise regions, and certain municipalities in central and northern Italy. No new information has been placed on the record of this review that would cause us to depart from this treatment. *See Live Swine from Canada*, 61 FR at 52420.

De Matteis is located in Campania and took advantage of this program. It did so by constructing a new semolina milling facility, including wheat silos, by-product storage silos, semolina silos, and milling equipment. A tax credit for De Matteis was approved in 2005 and a portion was used to reduce the company's income taxes in 2005, 2006, and 2007.

In the *Tenth Administrative Review,* the Department treated the amount credited against 2005 income as a non-recurring grant in accordance with the criteria in 19 CFR 351.524(c)(2)(i)–(iii). Specifically, the tax credit is exceptional because it was only available for a limited period of time, and was dependent upon companies making specific investments. Further, the tax credit required the GOI's authorization, and was tied to capital assets of the firm. Moreover, in accordance with 19 CFR 351.524(b)(2), we determined that the tax credit received by De Matteis exceeded 0.5 percent of its sales in the year in which the tax credit was approved. Therefore, we treated the portion of the tax credit used to offset income in 2005 as a grant received in that year and allocated the benefit over the AUL using the formula described in 19 CFR 351.524(d).

We have followed the same methodology for the portion of the tax credit used to offset income earned during the POR. Consequently, we divided the benefit received by De Matteis from the 2005, 2006, and 2007 grants in the POR by the company's total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from Law 289/02, Article 62 to be 0.76 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

[6] *See Certain Pasta from Italy: Preliminary Results of the Tenth Countervailing Duty Administrative Review,* 72 FR 43616 (August 6, 2007) (''*Tenth Administrative Review*''); unchanged in *Certain Pasta from Italy: Final Results of the Tenth (2005) Countervailing Duty Administrative Review,* 73 FR 7251 (February 7, 2008).

(2) Article 63—Increase in Employment

Article 63 of Law 289/02 provides a benefit in the form of a credit towards direct taxes, indirect taxes, or Social Security contributions. The law was established to promote employment by providing a tax credit to companies that increase the number of employees at the company by hiring new workers to long-term contracts. The monthly credit is 100 euros for a new hire for any company in Italy. If the employee is 45 years old or older, the monthly amount increases to 150 euros. The monthly credit is 300 euros if the company is located in the Mezzogiorno. Under the law, the granting of new credits ceased as of December 31, 2006. There is no limit as to when the credits can be applied as these credits carry over from one year to the next. However, as of 2007, the credits must be used as soon as possible and failure to do so forfeits the portion of the credit that could have been taken during the given year.

In the *Tenth Administrative Review,* we determined that Article 63 of Law 289/02 confers a countervailable subsidy. The credits are a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because they represent revenue foregone that is otherwise due to the GOI, and a benefit is conferred in the amount of the tax savings in accordance with 19 CFR 351.509(a). Finally, the program is specific within the meaning of 751(5A)(D)(iv) of the Act because the greater benefit amount is limited to certain geographical regions in Italy, specifically, Campania, Basilicata, Puglia, Calabria, Sicilia, Sardegna, Abruzzo, Molise, and the municipalities of Tivoli, Formia, Sora, Cassino, Frosnone, Viterbo, and Massa. No new information has been placed on the record of this review that would cause us to depart from this treatment. *See Live Swine from Canada,* 61 FR at 52420.

De Matteis is located in Campania and claimed the higher tax credits on the income tax forms filed during the POR.

Consistent with the *Tenth Administrative Review,* we are treating these benefits as recurring subsidies and attributing the benefit to the year in which the taxes would otherwise have been due, *i.e.,* the year in which the company filed its tax form.[7] To calculate the countervailable subsidy for De Matteis, we divided the difference during the POR between the savings for the respondent company located in the Mezzogiorno and the savings a company located in the rest of Italy would have received. This amount was divided by De Matteis's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from Law 289/02, Article 63 to be 0.03 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

F. Law 662/96—Patti Territoriali

The GOI describes *Patti Territoriali* grants (Law 662/96 Article 2, Paragraph 203, Letter d) as being provided to companies for entrepreneurial initiatives such as new plants, additions, modernization, restructuring, conversion, reactivation, or transfer. To be eligible for these grants companies must be involved in mining, manufacturing, production of thermal or electric power from biomasses, service companies, tourist companies, agricultural, maritime and salt-water fishing businesses, aquaculture enterprises, or their associations.

The *Patti Territoriali* provides grants to companies located within regions which meet the criteria of Objective 1 or Objective 2 under the Structural Funds or Article 87.3.c. of the Treaty of Rome. A *Patti Territoriali* is signed between the provincial government and the GOI. Based upon project submissions, the provincial government ranks the projects and selects the projects it considers to be the best. The provincial government submits the detailed plans to the GOI and, if approved, a special authorizing decree is issued for each company specifying the investment required and a schedule of the benefits.

The GOI reported that De Matteis received disbursements from the *Patti Territoriali* in 2000, 2004, and 2007, from a grant approved on January 29, 1999.

In the *Tenth Administrative Review*, the Department determined that this grant confers a countervailable subsidy within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. *See* Section 771(5)(D)(i) of the Act; *see also* 19 CFR 351.504(a). Also, this grant was found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because it is limited to companies located within regions which meet the criteria of Objective 1 or Objective 2 under the Structural Funds or Article 87.3.c. of the Treaty of Rome. In this review, neither the GOI nor the responding company has provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies. *See Live Swine from Canada*, 61 FR at 52420.

In the *Tenth Administrative Review*, the Department treated the *Patti Territoriali* grant as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We have followed the methodology described in 19 CFR 351.524(b)(2) which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. We determined that the grant received by De Matteis under Law 662/96 exceeded 0.5 percent of its sales in the year in which the grant was approved.

We used the grant methodology described in 19 CFR 351.524(d) to allocate the benefits over time. We divided the benefit received by De Matteis in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the *Patti Territoriali* grant to be 0.39 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

G. Law 662/96—Contratto di Programma

The GOI describes *Contratto di Programma* (Law 662/96, Article 2, Paragraph 203, Letter e) as an instrument provided for the expansion of existing facilities in regions that meet the criteria of Objective 1 or Objective 2 under the Structural Funds or Article 87.3.c. of the Treaty of Rome. *See* Memorandum to the File, ''Relevant Portions of GOI's Public Questionnaire Responses in the Tenth (2005) Countervailing Duty Administrative Review,'' dated March 2, 2009, at 30 (''Program Contracts Memo''); *see also* GOI's March 23, 2009, SQR. The expenses eligible for these grants are design, study, company land, brickwork, machinery, plants, and equipment. *See* Program Contracts Memo at 30. There are three types of entities eligible for these grants: (1) Large businesses operating in the industrial sector (mining, manufacturing, construction, production and distribution of power, vapor, and hot water), services, tourism, agriculture, fishing, and aquaculture industries; (2) associations of small and medium businesses operating in one or more of the above-indicated sectors; or (3) representatives of industrial, agricultural, agri-food, and fishing districts in which beneficiaries are small, medium, and large enterprises. *Id.*

During the first stage, an entity must apply for the grant through the Ministry of Economic Development (''MED'') (formerly the Ministry of Productive

[7] *See* 19 CFR 351.509(b).

Activities) which verifies the technical and economic validity of the proposed project, the entrepreneurship requirements of the proposing party, and the adequacy of the allocated funds. *Id.* at 32; *see also* GOI's March 23, 2009, SQR. The MED files a report with the Interministerial Committee for Economic Planning to approve the financial contribution. *See* Program Contracts Memo at 32. During the second stage, the proposing party provides an Executive Project for the implementation of the Project Plan. *See* GOI's March 23, 2009, SQR. Following approval, the *Contratto di Programma* is signed by the entity or entities receiving grants and the GOI. *See* Program Contracts Memo at 32. The grant is disbursed based on the progress of the work, except for the first installment which is made as an advance payment. *Id.*

De Matteis received a disbursement from the *Contratto di Programma* in 2007 as a result of a grant approved on March 27, 2006. *See* GOI's March 23, 2009, SQR; De Matteis's February 19, 2009, SQR at 5 and Exhibit 1. Under this *Contratto di Programma*, the GOI agreed to contribute half of the approved amount, while Regione Campania agreed to contribute the other half. *See* GOI's March 23, 2009, SQR.

We preliminarily determine that this grant confers a countervailable subsidy within the meaning of section 771(5) of the Act. It is a direct transfer of funds from the GOI and Regione Campania bestowing a benefit in the amount of the grant. See Section 771(5)(D)(i) of the Act; *see also* 19 CFR 351.504(a). Also, this grant is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because it is limited to companies located within regions which meet the criteria of Objective 1 or Objective 2 under the Structural Funds or Article 87.3.c. of the Treaty of Rome.

On this basis, we preliminarily determine the countervailable subsidy from the *Contratto di Programma* grant to be 0.46 percent *ad valorem* for De Matteis. *See* De Matteis Preliminary Calc Memo.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Social Security Reductions and Exemptions—Sgravi

(1) Law 223/91

Law 223/91 is designed to increase employment by providing benefits to companies that hire unemployed workers on a special mobility list. The mobility list comprises recently fired workers in certain sectors of the economy, but companies in any sector may hire workers off the mobility list.

(a) Article 8, Paragraph 2

Under Law 223/91, Article 8, Paragraph 2, the employer is exempted from social security contributions when a mobility-listed worker is hired under a short-term contract of up to 12 months. The employer receives such benefits for the length of the contract to a maximum of 12 months. But, if the short-term contract is converted to a permanent contract, the employer receives benefits for an additional 12 months.

Seventh Administrative Review,[8] we determined that Law 223/91 conferred a countervailable subsidy within the meaning of section 771(5) of the Act. The reduction or exemption of taxes was treated as revenue forgone and was, therefore, a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. The benefit was the amount of tax savings in accordance with 19 CFR 351.509(a). Additionally, we found that the program was regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because it was limited to companies in the Mezzogiorno or because the higher levels of benefits were limited to companies in the Mezzogiorno. In the *Eleventh Administrative Review*,[9] although we provided the GOI with two opportunities to demonstrate that this program was not countervailable, the GOI did not respond to the industry usage portion of the supplemental questionnaires. Therefore, we found no reason to reconsider our prior finding that benefits under Law 223/91, Article 8, Paragraph 2 are countervailable in the *Eleventh Administrative Review*.

Based on the GOI's responses in this administrative review, we determine that this program is not specific and, hence, not countervailable. In particular, Article 8, Paragraph 2 evidences no *de jure* or regional specificity. *See* GOI QR at Exhibit 24; *see also* GOI's February 18, 2009 SQR at 2–4, 9–10. Also, we find no evidence of *de facto* specificity. Information submitted by the GOI shows that, during the POR, there were numerous recipients of the benefits and neither pasta companies nor De Matteis were predominate users or received a disproportionately large share of the benefits. *See* GOI's February 18, 2009 SQR at Exhibit 2; *see also* De Matteis Preliminary Calc Memo. Further, during the POR, the benefits provided to ''Industry,'' the economic sector to which pasta companies belong, were not a disproportionately large amount. *Id.*

(2) Legislative Decree (''L.D.'') 276/03 (modification to Law 25/55)

L.D. 276/03 is aimed at making the labor market more flexible by providing incentives to companies hiring workers under apprentice contracts that mix work and training components. Specifically, the three categories of employee contracts recognized under this decree are: (1) Working toward completion of compulsory schooling; (2) working toward completion of trade schooling; and (3) high-level training of special skills for a worker. Except for a weekly flat fee paid by the employer on behalf of the employee, the employer receives a total exemption from its social security contribution. The contributions are applied in equal measure across Italy and the decree may be used in all economic sectors.

The GOI stated that L.D. 276/03 is a continuation of Law 25/55,[10] a program previously found countervailable in the *Seventh Administrative Review.* Although we provided the GOI with an opportunity to demonstrate that this program was not countervailable in the *Eleventh Administrative Review,* the GOI did not respond to the industry usage portion of the supplemental questionnaire. Therefore, we found no reason to reconsider our prior finding that benefits under Law 25/55 [11] are countervailable in the *Eleventh Administrative Review*.

Based on the GOI's responses in this administrative review, we determine that this program is not specific and, hence, not countervailable. In particular, Law 25/55 as modified by L.D. 276/03 evidences no *de jure* or regional specificity. *See* GOI's February 18, 2009 SQR at 4–9; *see also* GOI's March 23, 2009 SQR and April 9, 2009 SQR at 1. Also, we find no evidence of *de facto* specificity. Similar to Law 223/91, Article 8, Paragraph 2, information submitted by the GOI shows that, during the POR, there were numerous recipients of the benefits and neither

[8] *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review,* 69 FR 45676, 45683 (July 30, 2004) (''*Seventh Administrative Review*''); unchanged in *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004).

[9] *See Certain Pasta from Italy: Final Results of the Eleventh (2006) Countervailing Duty Administrative Review*, 74 FR 5922 (February 3, 2009) (''*Eleventh Administrative Review*''), and accompanying Issues and Decision Memorandum.

[10] See GOI's April 9, 2009 SQR at 1.

[11] Because the record of the eleventh review was not fully developed, in the final results, we also stated that, alternatively, L.D. 276/03 could be a continuation of another countervailable program, *i.e.*, Law 56/87.

pasta companies nor De Matteis were predominate users or received a disproportionately large share of the benefits. *See* GOI's April 9, 2009 SQR at 2; *see also* De Matteis Preliminary Calc Memo. Further, during the POR, the benefits provided to the ''Industry'' economic sector were not a disproportionately large amount. *Id.*

III. Programs Preliminarily Determined To Not Be Used

We examined the following programs and preliminarily determine that the producer and/or exporter of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

A. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (''PRISMA'')
B. European Regional Development Fund (''ERDF'') Programma Operativo Multiregionale (''P.O.M.'') Grant
C. Certain Social Security Reductions and Exemptions—Sgravi (including Law 223/91, Article 8, Paragraph 4 and Article 25, Paragraph 9)
D. Law 236/93 Training Grants
E. Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)
F. Development Grants Under Law 30 of 1984
G. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans
H. Law 317/91 Benefits for Innovative Investments
I. Brescia Chamber of Commerce Training Grants
J. Ministerial Decree 87/02
K. Law 10/91 Grants to Fund Energy Conservation
L. Export Restitution Payments
M. Export Credits Under Law 227/77
N. *Capital Grants Under Law 675/77*
O. Retraining Grants Under Law 675/77
P. Interest Contributions on Bank Loans Under Law 675/77
Q. Preferential Financing for Export Promotion Under Law 394/81
R. Urban Redevelopment Under Law 181
S. Industrial Development Grants under Law 183/76
T. Interest Subsidies Under Law 598/94
U. Duty-Free Import Rights
V. European Social Fund Grants
W. Law 113/86 Training Grants
X. European Agricultural Guidance and Guarantee Fund
Y. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)
Z. Interest Grants Financed by IRI Bonds
AA. Article 44 of Law 448/01

IV. Programs Preliminarily Determined To Have Been Terminated

A. Social Security Reductions and Exemptions—Sgravi

(1) *Law 863/84*

Law 863/84 provides social security reductions or exemptions when a company hires a worker under a non-renewable contract with a term of 24 months or less and the contract includes an educational or training component. The GOI refers to these as ''skilling'' contracts. The employer may receive reductions or exemptions from social security contributions for a period of up to 24 months. Typically, employees hired under these contracts must be no more than 29 years old, but in the Mezzogiorno, the maximum age is 32 years old. Also, a company in the Mezzogiorno is exempted from making social security contributions for employees hired under these skilling contracts, while companies in other areas of Italy receive a 25 percent reduction in social security contributions.

L.D. 276/03 repealed the provision related to skilling contracts by private companies and, as of November 2004, no new skilling contracts could be made. However, for skilling contracts entered into as of October 2004, benefits could be realized for the duration of the two-year period.

Because benefits expired prior to the POR (*i.e.*, October 2006) and because there is no evidence of substitute or replacement programs, we preliminary determine that Law 863/84 has been terminated prior to the POR and there are no subsidy benefits from this program during or after this POR.

V. Previously Terminated Programs

A. Regional Tax Exemptions Under IRAP
B. VAT Reductions Under Laws 64/86 and 675/55
C. Corporate Income Tax (''IRPEG'')
D. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
E. Export Marketing Grants Under Law 304/90
F. Tremonti Law 383/01
G. Social Security Reductions and Exemptions—Sgravi

(1) Article 44 of Law 448/01

(2) Law 337/90

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for De Matteis.

For the period January 1, 2007, through December 31, 2007, we preliminarily find the net subsidy rate for the producer/exporter under review to be that specified in the chart shown below:

Producer/Exporter	Net Subsidy Rate (percent)
De Matteis Agroalimentare S.p.A.	2.48
All-Others Rate	3.85

Assessment Rates

If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties at these net subsidy rates. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A., and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2007, and December 31, 2007, at the rates in effect at the time of entry.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at the *ad valorem* rates shown above on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms (except Barilla G. e R. F.lli S.p.A., and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), we intend to instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice.

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice, pursuant to 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results, in accordance with section 751(a)(3) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 21, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–12405 Filed 5–27–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XP48

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held June 15 - 18, 2009.

ADDRESSES: The meetings will be held at the Quorum, 700 N. Westshore Blvd., Tampa, FL 33609.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, June 17, 2009

1 p.m., The Council meeting will begin with a review of the agenda and minutes.

From 1:15 p.m. - 5:30 p.m., the Council will receive public testimony on exempted fishing permits (EFPs), if any; Final Reef Fish Amendment 31, and the Council will hold an Open Public Comment Period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Thursday, June 18, 2009

From 8:30 a.m. - 12:15 p.m. and 1:30 p.m. - 2:30 p.m., the Council will review and discuss reports from the committee meetings as follows: Reef Fish Management; Outreach & Education; Budget/Personnel; Administrative Policy; Mackerel Management; Spiny Lobster Management; CLOSED SESSION SSC Selection; Data Collection; Sustainable Fisheries/ Ecosystem; and SSC Selection.

From 2:30 p.m. - 3 p.m., they will discuss the Atlantic Sea Turtle Strategy.

From 3 p.m. - 3:30 p.m., Other Business items will follow. The Council will conclude its meeting at approximately 3:30 p.m.

Committees

Monday, June 15, 2009

12 p.m. - 1 p.m. - The Outreach & Education Committee will receive a Report from the O&E AP Meeting and an Update on Efforts to Provide Online Coverage of the Council Meetings.

1 p.m. - 2 p.m. - The Budget/ Personnel Committee will review the 2009 Budget and the 5-year Budget. They will also discuss the Status of SSC Stipends and receive a Report of the Administrative Officer's Meeting.

2 p.m. - 2:30 p.m. - The Administrative Policy Committee will discuss Comments on the Proposed Rule on Council Operations.

2:30 p.m. - 3:30 p.m. - Mackerel Management Committee will discuss a Scoping Document for Joint Mackerel Amendment 18 and Select Scoping Meeting locations.

3:30 p.m. - 5 p.m. - The Data Collection Committee will discuss the Report of the GSMFC FIN Meeting, Discuss Status Report from the SEDAR Steering Committee Meeting and Listen to the Report on MRIP Program.

5 p.m. - 5:30 p.m. - CLOSED SESSION - The SSC Selection Committee will consider Appointment of SSC/SEP/SAP Members.

Tuesday, June 16, 2009

8:30 a.m. - 12 p.m. & 1:30 p.m. - 5:30 p.m. - The Reef Fish Management Committee will meet to discuss the Final Action on the Reef Fish Amendment 31/DEIS to Address Longline/Turtle Interactions; Receive a Presentation on Consultation Assessment - Draft Effects Analysis and Draft Loggerhead Population Assessment; discuss the Status of the Emergency Rule for Longlining; Discuss Initiating Action to Encompass all Remaining Reef Fish into and IFQ Program; Discuss the Gag/Red Grouper Update Assessment and Holding a SSC Workshop on Venting/Safe Release Methods; and Receive a Presentation on the Status of Goliath Grouper Research/ Assessment Preparation.

5:30 p.m. - 6:30 p.m. - There will be an Informal Open Public Question and Answer Session.

Wednesday, June 17, 2009

8:30 a.m. - 11 a.m. - The Sustainable Fisheries/Ecosystem Committee will discuss the Scoping Document for Generic ACL/AM Amendment; Select Scoping Hearing Locations and receive a Report on the CRCP Meeting.

11 a.m. - 12 p.m. - The Spiny Lobster/ Stone Crab Management Committee will discuss the Scoping Document for the Joint Spiny Lobster Amendment 9 and Select Scoping Meeting Locations.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnsuon-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or

completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 22, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–12367 Filed 5–27–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 26, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–12589 Filed 5–26–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 19, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–12591 Filed 5–26–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, June 12, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–12593 Filed 5–26–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., June 17, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–12592 Filed 5–26–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday June 5, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–12590 Filed 5–26–09; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0080]

Federal Acquisition Regulation; Information Collection; Integrity of Unit Prices

Agencies: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation, Regulatory Secretariat (VPR) will be submitting to the Office of Management and Budget (OMB) a request to reinstate a previously approved information collection requirement concerning Integrity of Unit Prices.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 27, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement

Analyst, Contract Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 15.408(f) and the clause at FAR 52.215–14, Integrity of Unit Prices, require offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule contains no reporting requirements on contracts with commercial items.

B. Annual Reporting Burden

Respondents: *1,000.*
Responses per Respondent: *10.*
Annual Responses: *10,000.*
Hours per Response: *1 hour.*
Total Burden Hours: *10,000.*
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC, 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices.

Dated: May 21, 2009.

Edward Loeb,

Acting Director, Office of Acquisition Policy.

[FR Doc. E9–12364 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Feasibility Study of the Trilby Wash Study Area

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Analyses of foreseeable environmental impacts from potential actions in the vicinity of Trilby Wash and the McMicken Dam project area located near the Cities of Surprise, Sun City, El Mirage Litchfield Park and Goodyear, Maricopa County, Arizona will commence. No explicit plans have been advanced as yet, so contents of the Draft Environmental Impact Statement (DEIS) remain to be determined during the public scoping process. The Trilby Wash Study area encompasses the Trilby Wash watershed upstream and downstream from the McMicken Dam Project which includes: McMicken Dam, McMicken Dam Outlet Channel and McMicken Dam Outlet Wash, approximately 9 miles, 6 miles, and 4 miles respectively in length. The McMiken Dam Outlet Wash discharges to the Agua Fria River in Maricopa County, Central Arizona.

The purposes of this Feasibility Study are to develop and evaluate potential non-structural and engineered solutions to address flooding issues within the study area, to investigate opportunities for ecosystem restoration, and to provide recreational opportunities concurrent with flood risk management and ecosystem restoration. If there are measures and alternatives or plans that could be implemented within the U.S. Army Corps of Engineers, (USACE) missions, the Flood Control District of Maricopa County (FCDMC) has indicated their interest to support and provide necessary cost-sharing and other requirements for the project. The USACE and FCDMC will cooperate in conducting this Feasibility Study.

ADDRESSES: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RP, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Fink, Environmental Manager, telephone (602) 640–2001, ext. 232, or Ms. Gwen Meyer, Project Manager, telephone (602) 640–2004, ext. 281. The cooperating entity, Flood Control District of Maricopa County, requests inquiries be directed to Mr. Sam Sherman, P.E., telephone (602) 506–3639 for any additional information.

SUPPLEMENTARY INFORMATION: 1. *Authorization.* This study has been conducted under the authority provided by the Flood Control Act of 1938. This authority directs the Secretary of the Army, through the Chief of Engineers, to conduct preliminary examinations and surveys for flood control on the Gila River and tributaries in Arizona. Further authority is provided under House Committee on Public Works Resolution (Docket 2425) May 17, 1994 which states:

''* * * The Secretary of Army is hereby requested to review reports of the Chief of Engineers on the State of Arizona * * * in the interest of flood damage reduction, environmental protection and restoration, and related purposes.''

2. *Background.* The study area encompasses Trilby Wash watershed upstream from McMiken Dam, McMiken Dam itself, (approximately 10 miles in length) the Outlet Channel and Outlet Wash to the Agua Fria River, (an additional 10 miles). Originally termed the Trilby Wash Detention Basin Dam, McMicken Dam was constructed by the United States Army Corps of Engineers (USACE) in 1954 and 1955 to protect Luke Air Force Base, the Litchfield Park Naval Air Facility and agriculture activities in the area from flooding. Since its initial construction, new communities, such as Sun City Grand and Arizona Traditions and the Cities of Glendale, Peoria and Surprise have developed downstream from the dam. These communities have been afforded significant flood protection by McMicken Dam as a flood control structure. The dam is operated and maintained by the FCDMC. The dam also provides flood protection for critical public facilities and infrastructure such as; hospitals, schools, police and fire stations, freeways and other public roadways, railroads and canals. The ability of the dam and associated channels to maintain the current level of flood protection for the benefit of the public in an increasingly urbanized environment is in question due to concerns regarding aging infrastructure, land subsidence, earth fissuring, urbanization encroachment, changed hydrologic conditions, and current dam safety standards.

The FCDMC has completed numerous studies and has ongoing projects associated with flood risk management within the study area. This includes but is not limited to Area Drainage Master Plans, alternatives analysis of measures to rehabilitate McMicken Dam, and remediation of fissure risks. The Corps of Engineers and FCDMC entered into a cost share agreement to complete a feasibility study in September 2004. This feasibility study will utilize and expand existing information and work products completed by FCDMC and evaluate Federal participation in addressing issues identified within the study area.

The potential environmental impacts to be evaluated by this DEIS will include: (1) Non-structural solutions to address flooding issues; (2) engineered solutions to address flooding issues; (3) opportunities for ecosystem restoration, and; (4) designs for recreational features which would be most compatible with the natural resources of the region.

3. *Proposed Action.* No plan of action has yet been identified.

4. *Alternatives.* (a) No Action: No plans would be implemented to reduce flood risk. (b) Proposed Alternative Plans: None have been formulated to date.

5. *Public Involvement.* Public involvement, an essential part of the EIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, State, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the EIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable EIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; conflict resolution by consensus; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the EIS and supporting information readily available in conveniently located places, such as libraries and on the Internet.

Participation of all interested Federal, State, and County resource agencies, as well as Native American peoples, groups with environmental interests, and all interested individuals is encouraged. Public involvement will be most beneficial and worthwhile in identifying pertinent environmental issues, offering useful information such as published or unpublished data, direct personal experience or knowledge which inform decision making, assistance in defining the scope of plans which ought to be considered, and recommending suitable mitigation measures warranted by such plans. Those wishing to contribute information, ideas, alternatives for actions, and so forth can furnish these contributions in writing to the points of contacts indicated above, or by attending public scoping meetings. Notice of public scoping meetings will be published in the local and regional newspapers.

When plans have been devised and alternatives formulated to embody those plans, potential environmental and social impacts will be evaluated in the DEIS. These analyses will emphasize at least fifteen categories of resources: Land use, hazardous wastes, physical environment, hydrology, groundwater, biological, archaeological, historical, geological, air quality, noise, transportation, socioeconomics, and safety.

6. *Scoping Process.* Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the EIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient EIS preparation process; (c) define the issues and alternatives that will be examined in detail in the EIS; and (d) save time in the overall process by helping to ensure that the Draft EIS adequately addresses relevant issues. An initial public scoping meeting will be held on Thursday, June 25, 2009, in Surprise, AZ. Announcements through local and regional media, as well as a scoping meeting public notice announcing the location, date and time of the scoping meeting will be mailed to all interested parties during June 2009. Interested parties are encouraged to express their views throughout the entire study process. Comments will be welcomed at the public scoping meeting. In addition, written comments will also be accepted during the scoping comment period which will extend 30 days from the date of the scoping meeting public notice.

7. *Interagency Coordination and Cooperation.* The USACE and the USFWS have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS regarding threatened and endangered species under their jurisdictional responsibilities. The Arizona Game and Fish Department (AZGFD) will be consulted concerning potential impacts to sensitive species and habitats. Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer (SHPO). Coordination will be maintained with the U.S. Environmental Protection Agency (USEPA) concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.''

8. *Availability of the EIS.* It is anticipated that the DEIS will be available for public review during the spring of 2011. The DEIS or a Notice of Availability (NOA) will be provided during the 45-day review period to affected Federal, State and local agencies, Indian Tribes, and other interested parties.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–12388 Filed 5–27–09; 8:45 am]

BILLING CODE 3720–58–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by Florida and Ohio.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is Florida's third revision to its State plan and Ohio's second revision to its State plan.

The revised State plans from Florida and Ohio address changes in the respective budgets of the previously submitted State plans and account for the use of Fiscal Year 2008 requirements payments. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. The States all confirm that these changes to their respective State

plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from May 28, 2009, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Official

The Honorable Kurt S. Browning, Secretary of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399–0250, Phone: (850) 245–6500, Fax: (850) 245–6125.

The Honorable Jennifer Brunner, Secretary of State, 180 East Broad Street, 15th Floor Columbus, Ohio 43215–3726, Phone: (614) 466–2655, Fax: (614) 644–0649.

Thank you for your interest in improving the voting process in America.

Dated: May 20, 2009.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

This 2009 Update to subsection A.1. Introduction of Element 1 replaces the existing version as found on pages 7-8 of the 2006 HAVA State Plan.

ELEMENT 1. USE OF TITLE III REQUIREMENTS PAYMENTS

A. VOTING SYSTEMS

Section 251(b)(1): How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections.

1. Introduction

After the 2000 General Election, Florida made a concerted effort to improve all facets of its election procedures, standards and voting systems. The first major changes evolved from recommendations by the 2001 Governor's Select Task Force on Election Procedures, Standards and Technology. The Legislature adopted them in the Florida Election Reform Act of 2001. A central component of Florida's election law at that time mandated the replacement of punch card voting systems, lever machines, paper ballots and central count optical scanning systems with precinct tabulated Marksense voting systems or the Direct Recording Electronic (DRE or "touch screen") voting systems. The introduction of these voting systems sought to reduce voter error, to improve tabulation accuracy, and to restore voter confidence in Florida's elections.

The Legislature set the minimum standards for voting systems in this state. The Bureau of Voting Systems Certification within the Department of State has adopted rules that expand upon those standards for voting systems purchased and used in Florida. The Bureau is required to conduct bi-ennial review of the standards for voting systems. Each voting system goes through vigorous testing prior to its certification and use in Florida.

Florida's 67 counties have authority to purchase and to maintain the appropriate certified voting system for use in elections. Following the 2000 General Election, the State of Florida provided $24 million to assist counties in purchasing new certified voting systems. For the fiscal year 2004-05, the Florida Legislature additionally appropriated $11.6 million to assist Supervisors of Elections with purchasing DREs in order to provide one accessible voting system at each polling place. For the fiscal year 2005-06, the Legislature appropriated $13,406,163 to reimburse sixteen counties that acquired accessible voting systems prior to July 1, 2004. In addition, eight counties received a total of $63,215 as reimbursement for existing DREs that were not included in the fiscal year 2004-05 appropriations.

In July 2007, the Legislature initiated a major shift in voting systems requirements. As of July 1, 2008, all 67 counties are required to use marksense ballot systems as their primary voting system. Each county is still required to have one voter interface device in each polling place that meets the accessibility requirements for individuals with disabilities, which can be a DRE. However, in 2012, voter interface devices for persons with disabilities must also meet the requirement to allow voting by marksense ballot. Fifteen counties that exclusively used DREs for precinct voting purchased marksense voting systems for use in all elections held after July 1,

2008. Also in 2007, the Legislature authorized certain counties to use a ballot-on-demand production system for early voting and absentee voting. The purpose was to facilitate the county's ability to have an ample supply of all ballot styles at each early voting location. The Legislature appropriated $27,861,850 of HAVA funds for the purchase of optical scan and ballot-on-demand equipment after authorization obtained by the U.S. Election Assistance Commission.

There are currently three manufacturers who have certified voting systems for use in Florida: Premier Election Solutions (formerly Diebold Election Systems, Inc. (DESI)); Elections Systems and Software, Inc. (ES&S); and Sequoia Voting Systems, Inc. (SP). The following chart details the types of voting systems used in Florida, the respective manufacturer, and the number of counties using the voting systems for the period through 2006 and through 2009:

Table 1.1

(October 2006) Voting Systems and Number of Counties in Use For Precinct and Absentee Voting

Florida Certified Voting System	Precinct Equipment	Accessible Equipment	Central Count Method	Counties
Diebold Voting System Release 1-18-19, Version 2	AccuVote OS	AccuVote TSx DRE	Optical scan	22
Diebold Voting System 2005 B (Blended) + (Plus Audio)	AccuVote OS	AccuVote TSx DRE	Optical scan	9
ES&S Voting System Release 4.5, Version 1	Optech III P Eagle	iVotronic DRE	Optical scan	7
ES&S Voting System Release 4.5, Version 2	Model 100	iVotronic DRE	Optical scan	14
ES&S Voting System Release 4.5, Version 2	iVotronic DRE	iVotronic DRE	Optical scan	11
Sequoia AVC "Edge" Voting System Release 4.3.320	Edge I DRE	Edge I DRE	Optical scan	4

Table 1.2

(February 2009) Voting Systems and Number of Counties in Use For Precinct and Absentee Voting

Florida Certified Voting System	Precinct Equipment	Accessible Equipment	Counties
ESS	Paper Ballot Tabulator	iVotronic DRE	31
	Paper Ballot Tabulator	AutoMARK	1
			32
Premier	Paper Ballot Tabulator	AccuVote TSX DRE	30
	Paper Ballot Tabulator	AutoMARK	3
			33
Sequoia	Paper Ballot Tabulator	Edge DRE	**2**
			Total: 67

2009 Update to Florida's HAVA State Plan : Element 1

Section 301 of the Title III of the Help America Vote Act of 2002 (HAVA) also established new voting system requirements that were to be met by January 1, 2006. Florida is in compliance with these new federal directives and these are addressed in the HAVA State Plan.

2009 Update to Florida's HAVA State Plan: Element 6

This 2009 Update to Element 6 replaces in its entirety Element 6 as written on pages 65-76 of the 2006 HAVA State Plan.

Element 6 – Florida's Budget for Implementing the Help America Vote Act of 2002 (HAVA)

Section 254(a)(6): The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on –

(A) the costs of the activities required to be carried out to meet the requirements of Title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

1. Introduction
Each of the HAVA Planning Committees has clearly recognized its advisory role in election reform and acknowledged the authority of the Florida Legislature to make funding decisions for Florida. The original budget and subsequent changes reflect the best efforts to divide the funds made available during the timeframe identified in each version of the HAVA Plans submitted.

2. Reimbursement for replacement of punch card and lever machines.
Following the 2000 General Election, the State of Florida assisted counties by investing approximately $24 million to replace outdated voting machines. In order to recoup some of this expense, Section 102 federal funds in the amount of $11,581,377 were returned to the State of Florida as reimbursement.

3. Statewide Voter Registration System.
In 2003, the Florida Legislature directed the Department of State to begin development of a statewide voter registration system that would meet the requirements of HAVA. To date, approximately $28 million has been spent to develop and maintain the Florida Voter Registration System.

4. Section 301 Accessible Voting Systems
The HAVA Planning Committee (2003) recommended the purchase of Direct Recording Equipment (DRE) accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place. The cost was $11.6 million during the 2004-05 fiscal year. In addition, the HAVA Planning Committee (2003) recommended reimbursing counties that have already purchased voting systems that meet the HAVA accessibility for voters with disabilities requirements.

For the fiscal year 2004-05 the Legislature appropriated $11.6 million to assist Supervisors of Elections (SOEs) with purchasing DREs in order to provide one accessible voting system at each polling place. Funds appropriated in FY 2004-05 were distributed to SOEs that had not acquired accessible voting systems by July 1, 2004. Fifty-one counties did not have accessible voting

systems at that time. The Division of Elections distributed the funds to those counties for this purpose pursuant to the terms of a memorandum of agreement.

For the fiscal year 2005-06 the Legislature appropriated funds to reimburse counties that acquired accessible voting systems prior to July 1, 2004. Funds in the amount of $13,406,163 were distributed to the sixteen counties that purchased accessible voting systems prior to July 1, 2004. The appropriation was included in the fiscal year 2005-06 General Appropriations Act, specific appropriation 2931. In addition, there were eight counties that received a total of $63,215 as reimbursement for existing DREs that were not included in the FY 2004-05 appropriations.

5. Voter Education

The HAVA Planning Committee (2003) recommended using HAVA funds for the development and implementation of a comprehensive statewide voter education program. For the fiscal year 2003-04, $2,976,755 was appropriated and available to Florida counties for voter education programs. For each fiscal year 2004-05 and 2005-06, local governments received $3 million for comprehensive voter education efforts. For the fiscal year 2006-07, the Legislature appropriated $2 million to distribute to Supervisors of Elections to assist with voter education activities. Each county was required to provide matching funds of 15%.

Activities relating to voter education include mailing or publishing sample ballots; conducting activities pursuant to the Standards for Nonpartisan Voter Education as provided in Rule 1S-2.033, F.A.C.; print, radio, or television advertising to voters; and other innovative voter education programs, as approved by the Department of State. No Supervisor of Elections was to receive any funds until the county Supervisor of Elections provided to the Department of State a detailed description of the voter-education programs, such as those described above, to be implemented.

The HAVA Planning Committee (2009) recognized concerns that were raised about effective voter education for persons with disabilities, with specific reference to informing all voters with disabilities of the availability of accessible voting machines. The Committee urges the Department of State to encourage Supervisors of Elections to conduct, and assist them with conducting, more effective voter education to accomplish this important goal. The Department and Supervisors are encouraged to work with organizations serving persons with disabilities to accomplish this goal.

6. Poll Worker Training

The HAVA Planning Committee (2003) recommended using HAVA federal funds in the amount of $250,000 for each fiscal year 2003-04, 2004-05 and 2005-06 for poll worker training. These funds were intended to supplement each county's existing poll worker training budget. The 2004 Legislature did not appropriate federal funds for conducting a poll worker recruitment campaign.

The HAVA Planning Committee (2004) once again recommended using HAVA federal funds in the amount of $500,000, beginning with FY 2005-06, for poll worker training and recruitment, with a 15% match required of each county. The Legislature appropriated $4 million for poll worker recruitment and training in FY 2005-06. Of this $4 million, the Department of State

distributed $3 million to Supervisors of Elections to assist with poll worker recruitment and training. The Legislature provided $1 million for the Department of State to develop a statewide poll worker training curriculum. Each county was required to provide matching funds of 15%.

As provided for in HAVA, Section 251(b)(2)(B), States may use a portion of the requirements payment to carry out other activities to improve the administration of elections for Federal office if the State certifies to the EAC that the amount expended does not exceed the minimum payment amount. Florida's minimum payment amount is $11,596,803.

In March 2006 the Department of State notified the EAC of its intent to use part of the requirements payment to assist county Supervisors of Elections with recruiting and training poll workers.

In FY 2006-07 the Legislature appropriated $1.5 million for poll worker recruitment and training activities. Of this amount, the Department of State distributed $1 million to Supervisors of Elections to assist with recruiting and training individuals to serve as poll workers. The Legislature authorized an additional $500,000 for the Department of State to use for necessary updates and revisions to poll worker training curriculum that was developed with funds appropriated in FY 2005-06.

The HAVA Planning Committee (2009) recognized concerns raised about insuring that voting machines that are accessible for persons with disabilities are properly set up when polls open, in a physically accessible location, and that all voters with disabilities, regardless of whether their disability is apparent or not, are informed of the availability of the accessible machines. The Committee urges the Department of State to encourage Supervisors of Elections to conduct, and assist them with conducting, training of poll workers to insure that such accessible machines are set up and ready to use, in a physically accessible location, when the polls open in each polling place in a county and that all voters are informed of the availability of such machines. The Department and Supervisors are encouraged to work with organizations serving persons with disabilities to accomplish this goal.

7. Federal Election Activities. The Florida Legislature appropriated a total of $2 million in fiscal year 2007-08 and $3 million in fiscal year 2008-09 for the counties under the category of "federal election activities." Funds disbursed under this category can be used for election administration activities such as voter education, poll worker recruitment and training, revisions to the statewide poll worker curriculum, standardizing elections results reporting, and other federal election activities as approved by the state. Prior to receipt of these funds, the Supervisors of Election must submit a detailed program plan on how those funds will be expended and the Chair for the Board of County Commissioners must certify that the respective county has provided a 15% match in funds.

8. Statewide Poll Worker Recruitment Campaign

The HAVA Planning Committee (2003) recommended that HAVA federal funds be used to implement, through the Division of Elections, a statewide campaign to help recruit qualified poll workers. The increase in the complexity of voting systems and procedures has resulted in a need for more computer literate individuals to staff the polling places and help ensure error-free

elections. The 2004 Legislature did not appropriate federal funds for conducting a statewide poll worker recruitment campaign. As indicated under the Poll Worker Training section, the Legislature did appropriate funds in the fiscal years 2005-06 and 2006-07 for poll worker training and recruitment programs.

9. HAVA Oversight and Reporting

The HAVA Planning Committee (2003) recommended that the Department of State create three full time positions to manage HAVA implementation:

- HAVA administrator
- Grants specialist
- Administrative assistant

The Florida Legislature authorized three positions within the Division of Elections for HAVA Oversight and Reporting. For the fiscal year 2003-04, the Division appropriated $206,079 for salaries and benefits, expenses and operating capital outlay. The three position titles are:

- Senior Management Analyst Supervisor
- Operations and Management Consultant II
- Administrative Assistant II

The actual costs for HAVA oversight and reporting were as follows:

- FY 2004-05 $171,201
- FY 2005-06 $193,599
- FY 2006-07 $188,091
- FY 2007-08 $170,737

The three positions currently assigned to HAVA oversight and reporting are: Senior Management Analyst Supervisor, Government Analyst I and Administrative Assistant II. Proposed budgets for subsequent fiscal years are as follows and are also included under budget projections in Other Election Administration Activities in tables that appear at the end of this section and in Table 12.1:

- FY 2008-09 $288,660
- FY 2009-10 $293,993
- FY 2010-11 $299,433
- FY 2011-12 $304,982

9. State Management (HAVA Planning Committee)

The HAVA Planning Committee (2003) recommended that the Secretary of State require it to meet twice each year in 2003-04 and in 2004-05 to make recommendations and to resubmit the HAVA State Plan to ensure that Florida is meeting the requirements of the Help America Vote Act. The HAVA Planning Committee convened twice in the 2003-04 fiscal year at an estimated cost of $30,000.

The HAVA Planning Committee (2004) further recommended that it meet twice in the 2004-05 fiscal year at an estimated cost of $30,000 and twice in the 2005-06 fiscal year at an cost of $30,000. The HAVA Planning Committee (2006) convened twice in Fiscal Year 2006-07 at an estimated cost of $25,000. The HAVA Planning Committee (2009) met once in FY 2008-09 to develop revisions to the State Plan.

10. Performance Goals and Measures Adoptions

The HAVA Planning Committee (2003) recommended the Secretary of State utilize the HAVA Planning Committee to determine performance goals and measures.

The HAVA Planning Committee (2004) determined HAVA performance goals and measures to update the HAVA State Plan. The only costs associated with developing the Performance Goals and Measures were costs related to conducting the HAVA State Planning Committee (2004) meetings on May 24, 2004, and June 4, 2004.

The HAVA Planning Committee (2006) updated the performance goals and measures as part of its second update to the original HAVA Plan.

11. Election Administration

The HAVA Planning Committee (2006) recommended using HAVA funds as needed for election administration activities such as printing new voter registration application forms, translating election materials, printing documents and publications, preparing training videos or other election administration activities. Estimated expenditures for these activities may vary each year and will be dependent upon annual legislative appropriations. (Pursuant to a Funding Advisory Opinion 08-005 issued by the U.S. Election Assistance Commission, HAVA funds may not be used to print, copy or revise State voter registration forms or to conduct voter registration drives.)

12. Complaint Procedures

Section 402(a) of HAVA requires each state to establish state-based administrative complaint procedures for any person who believes that there is or will be a violation of any of HAVA's Title III requirements. In 2003, the Florida Legislature enacted Section 97.028, *Florida Statutes*, which provides the administrative complaint procedures for reporting potential violations of HAVA requirements. The process was developed and implemented without utilizing any HAVA funds. However, the HAVA Planning Committee (2006) recommended continued funding in the amount of $50,000 each year in the event expenditures are necessary to process complaints in the future.

13. Other Election Administration Activities

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Pursuant to Section 251(b)(2)(A), States may use the requirements payment to carry out other activities to improve administration of elections for Federal office after the state has provided a certification to the EAC that it has implemented the requirements of Title III.

The HAVA Planning Committee (2004) recommended that the remaining HAVA funds be reserved for future expenses related to the following items:

1. the continued development and implementation of the Florida Voter Registration System
2. future improvements in voting technology
3. continued funds to local counties for voter education programs
4. accessibility for polling places
5. poll worker recruitment and training

In March 2006, Florida notified the Elections Assistance Commission of its intent to use $4,000,000.00 of the requirements payment to complete major poll worker recruitment and training efforts statewide that primarily begin in June 2006 and end by August 2006, before the primary election scheduled for September 5, 2006. Since the State had not yet met all the requirements of Title III, the State certified that the amount did not exceed the amount equal to the total minimum requirements payment amount applicable to Florida under section 252(c) of Title II of HAVA which has been determined to be $11,596,803.00. In August 2006 Florida certified to the Elections Assistance Commission (EAC) that it had fully implemented all the requirements of Title III which has allowed Florida to use HAVA requirements funds for other activities to improve the administration of elections for Federal office.

Information on the State's best estimates of the costs of activities to meet the requirements of Title III of HAVA is displayed in charts on the following pages. The HAVA Planning Committee (2009) found that based on projected expenditures for FY 2008-2009, HAVA funds for continued maintenance and enhancements to the Florida Voter Registration System and for support will be exhausted by FY 2015-2016. Thereafter, other funding sources or options for FVRS will need to be explored in order to ensure that Florida remains in compliance with HAVA.

Table 6.1

Election Reform Revenues 2003- 2008 Fiscal Years

	HAVA 101	HAVA 102	HAVA 251	Total Federal Funds	State Matching Funds
2003-04	$ 14,447,580	$ 11,581,377	$ 47,416,833	$ 73,445,790	$ 525,000
2004-05	0	0	$ 85,085,258	$ 85,085,258	$ 6,103,018
2005-06	0	0	0	0	0
2006-07				0	0
2007-08				0	375,776
2008-09			$ 6,477,573	$ 6,477,573	$ 340,925
Total	$14,447,580	$11,581,377	$138,979,664	$165,008,621	6,968,943

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Table 6.2

HAVA BUDGET FUNDING BY FISCAL YEAR 2004-05
2009 STATE PLAN UPDATE

	FY 2004-05 APPROPRIATION	EXPENDITURES THRU 6-30-05	BALANCE
Title III Requirements			
Sec. 303 Statewide Voter Registration System (Section 101 and Section 251 HAVA Funds)			
FVRS Development/Implementation	12,799,182	11,599,329	1,199,853
Sec. 301 Voting System Standards (Section 251 HAVA Funds)			
Funding to counties/purchase disability compliant voting systems	11,600,000	11,600,000	0
Other Election Administration Activities (Section 101 and Section 251 HAVA Funds)			
Includes voter education, oversight and other election administration activities	3,498,492	3,426,604	71,888
TOTAL	**27,897,674**	**26,625,933**	**1,271,741**

Table 6.3

HAVA BUDGET FUNDING BY FISCAL YEAR 2005-06
2009 STATE PLAN UPDATE

	FY 2005-06 APPROPRIATION	EXPENDITURES THRU 6-30-06	BALANCE
Title III Requirements			
Sec. 303 Statewide Voter Registration System (Section 101 and Section 251 HAVA Funds)			
FVRS Development/Implementation	11,396,747	11,193,625	203,122
Sec. 301 Voting System Standards (Section 251 HAVA Funds)			
Reimbursement to counties for disability accessible voting systems	17,000,000	11,985,284	5,014,716
Other Election Administration Activities (Section 101 and Section 251 HAVA Funds)			
Includes voter education, oversight and other election administration activities	7,195,000	6,293,124	901,876
TOTAL	**35,591,747**	**29,472,033**	**6,119,714**

Table 6.4

HAVA BUDGET FUNDING BY FISCAL YEAR 2006-07
2009 STATE PLAN UPDATE

	FY 2006-07 APPROPRIATION	EXPENDITURES THRU 6-30-07	BALANCE
Title III Requirements			
Sec. 303 Statewide Voter Registration System (Section 101 and Section 251 HAVA Funds)			
FVRS Development/Implementation	2,643,369	3,001,348	(357,979)
Bureau of Voter Registration Services	1,145,805	891,804	254,001
Sec. 301 Voting System Standards (Section 251 HAVA Funds)			
Reimbursement to counties for disability accessible voting systems	1,165,515	591,514	525,001
Other Election Administration Activities (Section 101 and Section 251 HAVA Funds)			
Includes voter education, oversight and other election administration activities	3,891,992	3,493,694	398,298
TOTAL	**8,797,681**	**7,978,360**	**819,321**

Table 6.5

HAVA BUDGET FUNDING BY FISCAL YEAR 2007-08
2009 STATE PLAN UPDATE

	FY 2007-08 APPROPRIATION	EXPENDITURES THRU 6-30-08	BALANCE
Title III Requirements			
Sec. 303 Statewide Voter Registration System (Section 101 and Section 251 HAVA Funds)			
Section 101 and Section 251 HAVA funds			
FVRS Development/Implementation	4,353,801	2,601,315	1,752,486
Bureau of Voter Registration Services	1,641,915	1,389,114	252,801
Sec. 301 Voting System Standards (Section 251 HAVA Funds)			
Funds to 15 counties to convert to marksense ballot voting system	22,968,625	10,713,625	12,255,000
Funds to 28 counties to purchase early voting ballot-on-demand equipment	4,893,225	4,893,225	0
Other Election Administration Activities (Section 101 and Section 251 HAVA Funds)			
Includes voter education, oversight and other election administration activities	2,460,424	2,294,763	165,661
Transfer to General Revenue		12,512,373	(12,512,373)
TOTAL	**36,317,990**	**34,404,415**	**1,913,575**

Table 6.6

HAVA BUDGET FUNDING BY FISCAL YEAR
2009 STATE PLAN UPDATE

	FY 2006-07 Actual Expenses	FY 2007-08 Actual Expenses	FY 2008-09 Actual Expenses	FY 2009-10 Proposed Budget	FY 2010-11 Proposed Budget	FY 2011-12 Proposed Budget
Title III Requirements						
Sec. 303 Statewide Voter Registration System (Section 101 and Section 251 HAVA Funds)						
FVRS – Systems (includes positions plus costs for software license fees and ongoing maintenance costs	3,571,028	2,601,314	4,803,937	5,022,292	7,363,640	5,655,813
FVRS - Bureau of Voter Registration Services (includes positions and regular operating expenses)	1,391,434	1,389,114	1,598.067	2,066,674	2,043,315	2,070,552
Sec. 301 Voting System Standards (Section 251 HAVA Funds)						
Reimburse counties for disability compliant voting systems	591,515	0	0	0	0	0
Other Election Administration Activities (Section 101 and Section 251 HAVA Funds)						
Election Administration Activities including voter education, poll worker recruitment and training, over-sight (including positions) and other election administration activities.	5,461,621	30,413,986	3,749,036	3,163,784	2,899,856	2,906,913
TOTAL	**11,015,598**	**34,404,414**	**10,151,040**	**10,252,750**	**12,306,811**	**10,633,278**

This 2009 Update to Element 12 replaces in its entirety Element 12 as written on pages 96-103 of the 2006 HAVA State Plan.

ELEMENT 12. CHANGES TO STATE PLAN FOR PREVIOUS FISCAL YEAR

Section 254(a)(12): ***In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.***

1. Introduction

Florida submitted its initial HAVA State Plan in 2004. In 2006, then Secretary of State Sue M. Cobb appointed a new HAVA Planning Committee to update the 2004 HAVA State Plan. Through a competitive bid process, the Secretary selected the Collins Center for Public Policy, Inc., to staff the update process. The HAVA Planning Committee (2006) held two public meetings—one in Pensacola, Florida on September 21, 2006, and one in Miami, Florida on October 12, 2006.

In 2009, Secretary of State Kurt S. Browning appointed a new HAVA State Planning Committee to update the 2006 HAVA State Plan to reflect recent state legislative changes and provide updated budgetary information. As with prior HAVA Planning Committees, the HAVA Planning Committee (2009) focused on three types of changes:

- Substantive changes made by the State of Florida that bring the State into further compliance with HAVA
- Minor updates that will not affect the State's compliance with HAVA
- Issues that have arisen that might affect the State's future compliance with HAVA

As has been the practice with prior committees, the HAVA Planning Committee (2009) received copies of the original plan and the Help America Vote Act of 2002. All updates and changes to the plan from the previous fiscal year were noted as follows:

- Sections of the previous plan were deleted but were first shown in a strike-through font and approved by the committee.
- Sections of the plan that were new were shown in an underlined font.
- After the HAVA Planning Committee reviewed and approved the updates, the underline and strike-through fonts were removed.

The HAVA Planning Committee (2009) held one public meeting on March 23, 2009 in Tallahassee, Florida. The names of prior and current committee members are listed under the amended Element 13 of this plan.

2. HAVA State Plan's Substantive Changes from Previous Fiscal Year

The following chart is a summary of how the HAVA State Plan has substantively changed for the specified timeframes and how the State succeeded in carrying out the HAVA State Plan for the fiscal years noted.

Table 12.1

Element 1. Use of Title III Requirements Payments	
A. Voting Systems	
2004-2006	Certified voting systems were added to the plan and decertified voting systems were deleted from the plan. Voting systems for voters with disabilities have been certified for use in each polling place. Certified voting systems performed as designed during the 2006 statewide Primary and General Elections. Florida meets all HAVA voting system requirements.
2007-present	*Voting Systems: Improvement, Acquisition, and Modification & Replacement.* In 2007, the Florida Legislature mandated that all voting be by marksense ballots. This eliminated the use of DREs in any election after January 1, 2008. An exception exists to allow DREs to be used by persons with disabilities. However, by 2012 all accessible voting systems used in the state must allow for voting by marksense ballots. Florida Voting System Standards (DS-DE11) as incorporated by reference into Rule 1S-5.001, Florida Administrative Code, meet the error rate established by the 1990 Federal Elections Commission and is in compliance with HAVA requirements. The Bureau of Voting Systems Certification within the Division of Elections conducts periodic updates of its voting systems standards. Although not bound by 2007 Voluntary Voting System Guidelines adopted by the Election Assistance Commission, the Bureau reviews the state standards against these guidelines and to the extent reasonably feasible, logistically possible and compliant with state law, the Division shall consider those standards and any subsequent standards in any update to its state standards. The Division of Elections enhanced its website to provide better public access to information on all certified voting system vendors by system title, county, vendor or precinct voting method. Pursuant to section 101.5606, Florida Statutes, the Division additionally devised and uses the Florida Voting Systems Certification Checklist & Test Record in order to better document and monitor the process. Certified voting systems performed as designed in elections for the 2008 Presidential Preference Primary, Primary and General Elections. Florida continues to meet all HAVA voting system requirements.
B. Provisional Voting and Voting Information	
2004-2006	Florida Supreme Court case ruled that in order for provisional ballot to count, the provisional ballot must be cast only in the precinct in which the voter is registered. See *AFL-CIO v. Hood, 885 So.2d 373 (Fla. 2004).* Under state law, persons casting provisional ballots have until 5:00 p.m. on the 3rd day following an election to present written evidence supporting their eligibility to vote.
2007-present	In 2008, the Florida Legislature changed the law to reduce the number of days from 3 days to 2 days in which a provisional ballot voter has to present evidence of eligibility in order for the provisional ballot to count. (see s.13, chapter 2007-30, Laws of Florida). Those voters who vote provisionally solely because they failed to provide a photo and signature identification at the polls do not need to provide further evidence of eligibility. If the canvassing board finds that the signature on the provisional ballot certificate matches the signature on record, the provisional ballot will count. See section 101.048, Florida Statutes.

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C. Voter Registration System	
2004-2006	Florida developed and implemented the new Florida Voter Registration System (FVRS). The FVRS became operational in January 2006. The FVRS complies with all of HAVA's requirements under section 303. FVRS performed as designed during the 2006 statewide Primary and General Elections. The Secretary of State created the Bureau of Voter Registration Services to direct and facilitate the operations of the FVRS.
2007-present	• The State continuously re-evaluates, adjusts and enhances FVRS list maintenance in a nondiscriminatory manner and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002. Two primary maintenance processes occur regularly to ensure that the voter registration records are accurate and current. One is based on address changes and the other is based on ineligibility. The Florida Legislature amended the law in 2008 that affects the biennial and continual address list maintenance activities conducted at the local level. See ss.6-7, chapter 2008-95, Laws of Florida. The law changed to allow voter registration officials to immediately change the address of a voter registration record in FVRS upon receipt of change-of-address information received from third party sources such as postal service, the Department of Highway Safety and Motor Vehicles, and jury notices. This process represents a departure in that previously a voter had to confirm such address change before the change could be entered into the system. With the new law, the change is entered first and then a notice is sent to the registered voter at his or her newly recorded residence address. The registered voter is asked to verify or correct the address change as already made. See section 98.065(4), *Florida Statutes*. At the state level, the Department continues to streamline and automate to the extent possible the list maintenance processes undertaken by the Bureau of Voter Registration Services (BVRS) pursuant to section 98.075, Florida Statutes. In 2009, the Bureau of Voter Registration Services automated its process for identifying duplicate records in FVRS. Upon receipt of automated system notices, Supervisors of Elections are required to review and resolve whether the records are duplicates. BVRS has also revamped its procedures in conjunction from the Florida Department of Law Enforcement and the Florida Association of Clerks of Court to refine the process for identifying registered voters who are felons or persons who have been declared by a court to be mentally incapacitated. Documentation in support of a registered voter's potential ineligibility is forwarded to the Supervisors of Elections. The Supervisor of Elections is then responsible for initiating and following through the notice and removal steps in section 98.075(7), Florida Statutes. Finally, BVRS in conjunction with the Florida Department of Health's Office of Vital Statistics has scheduled more frequent data transfer of death records. This information as subsequently matched against registered voter records is transmitted to the Supervisors of Elections for immediate record removal from FVRS. • In 2006, Florida instituted a process for verifying personal identifying information on the voter registration application as required by HAVA and in accordance with State law (Sections 97.053 and 97.057, *Florida Statutes*). The Florida Department of State entered into an agreement with the Florida Department of Highway Safety and Motor Vehicles to match and verify the accuracy of the information on the voter registration application. In turn, under HAVA, the Executive Director of the Department of Highway Safety and Motor Vehicles entered into an agreement in November 2005 with the Commissioner of Social Security Administration to verify the last four digits of the social security numbers provided on the applications. The Department of State is still working on updating the agreement to reflect current maintenance and operational rules and criteria for identification verification in light of the upcoming changes resulting from DHSMV's implementation of the REAL ID Act.

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	• In 2008, the Florida Legislature amended the voter registration process as pertained to the verification of an applicant's personal identifying number. The law required a person to provide proof of his or her identity by providing a personal identifying number (i.e., Florida driver's license number, Florida identification card number, or last 4 digits of the Social Security) on the application. The personal identifying number would then be verified by the Florida Department of Highway Safety and Motor Vehicles or the Social Security Administration, whichever was applicable. If the number could not be verified, the law previously allowed a person to prove his or her identity by bringing in authenticating evidence of the number as originally provided on the application. By doing so, the person's application could be processed and if the person voted a provisional ballot, his or her ballot would be counted. With the change in law in 2008, a person is no longer limited to bringing in evidence of the number as originally provided on the application. A person may now bring in evidence of either the same number, a different number of the same type as originally provided, or a different number altogether, provided it is authentic evidence of the person's Florida Driver's License Number or state identification card number or the last 4 digits of his or her social security number. If the Supervisor of Elections finds the evidence to be sufficient, the person is registered as an active voter. See s. 3, chapter 2008-95, *Laws of Florida* (amending section 97.053(6), *Florida Statutes*. FVRS continues to meet all HAVA voter registration and computerized list maintenance system requirements.

Element 2- Local Government Payments and Activities	
2004-2006	• In FY 2004-05, the State of Florida distributed $11.6 million to local Supervisors of Elections to purchase one accessible voting system for each polling place. • In FY 2005-06, the State of Florida distributed $13,406,193 to reimburse 16 counties that acquired accessible voting systems prior to July 1, 2004. • In FY 2005-06, the State of Florida distributed an additional $63,215 to reimburse eight other counties that acquired accessible voting systems prior to July 2004 and were not included in funding provided in FY 2004-05. • In FYs 2004-05 and 2005-06, the State of Florida distributed to local governments $3,000,000 each fiscal year to fund comprehensive voter education efforts. • In FY 2005-06, the State of Florida distributed $3,000,000 to local Supervisors of Elections to conduct poll worker recruitment and training. The accessible voting machines performed as designed during the 2006 statewide Primary and General Elections.
2007-present	• ***Federal Election Activities.*** The Florida Legislature appropriated a total of $2 million in fiscal year 2007-08 and $3 million in fiscal year 2008-09 for the counties under the category of "federal election activities." Funds disbursed under this category can be used for election administration activities such as voter education, poll worker recruitment and training, revisions to the statewide poll worker curriculum, standardizing elections results reporting, and other federal election activities as approved by the state. Prior to receipt of these funds, the Supervisors of Election must submit a detailed program plan on how those funds will be expended and the chair of the Board of County Commissioners must certify that the respective county has provided 15% matching funds. • ***Voting Systems and Ballot-on-Demand Assistance***. In 2007, the Florida Legislature appropriated $22,968,625 to assist 15 counties in the conversion from touch screen voting systems to optical scan voting systems in accordance with state law mandate. An additional grant of $4,893,225 was disbursed to 28 counties to assist with the purchase of Ballot-on-Demand equipment for use in early voting.

Element 3- Voter Education	
2004-2006	The HAVA Planning Committee (2004) recommended and the Legislature approved an additional $3 million for voter education in FY 2005-06. The 2004 Voter Education Program Report to the Florida Legislature and Governor concluded that county voter education efforts were considered useful or well received by voters. In 2006, a review of voter education programs throughout Florida indicated a variety of programs being used including sample ballots, nonpartisan voter education, media advertising, and innovative programs. In response to an Auditor General Report (2006-194), the Department of State took measures to closely monitor county voter education reports to ensure compliance with HAVA. Also in 2006, the Florida Legislature directed the Division of Elections to develop a statewide uniform training curriculum for poll workers in 2006.
2007-present	• ***Poll worker Training***: The Department of State completed the Florida State Poll Workers Training Manual in 2007. Supervisors of Elections currently use the manual to assist in training poll workers. • ***Voter Education Program/Federal Activities Funding***: The State of Florida funded county voter education programs as follows: ○ Fiscal year 2006-07: $2 million ○ Fiscal years 2007-08 and 2008-09: $5 million total for federal election activities. This amount could be applied towards voter education and poll worker recruitment and training. • ***Dissemination of Information to Voters and Election Officials***: ○ In 2008, the Division of Elections completely revamped its Internet website (http://elections.myflorida.com). The website offers an extensive array of information for the voter, candidates and committees, and elections officials. Topics covered include voter registration procedures, election dates, statistical reports, elections fraud, press releases, voting systems, Supervisor of Elections' contact information, laws/opinions/rules, campaign financial reporting, committee registration, candidate qualifying requirements, initiative petition process and other helpful governmental links. Prominently displayed on the Web Site home page is information on: the Voter Assistance Hotline Toll Free Number—for the general public and for people using Text Telephone (TTY); and the Florida Voter Fraud Hotline Toll Free Number. ○ County Supervisors of Elections must constantly update information disseminated to the public, poll workers, and their own staff to conform to state legislative mandates and HAVA requirements including the change in law regarding acceptable forms of identification in order to vote. In 2008, the Florida Legislature amended section 101.6923, *Florida Statutes* (relating to special first-time mail-in registrants), to conform this section of law to a 2007 change to section 101.043, Florida Statutes (relating to identification at the polls) that eliminated two forms of previously acceptable forms of photo identification: employee badge or identification and the buyer's club identification. • ***Voter Education Program Reports*** ○ In the *Report on Voter Education Programs During the 2006 Election Cycle* (2007), the Department concluded the supervisors of elections use their voter education programs to generate an interest in the election process and to increase voter participation. All of the broad voter education categories listed in the report received an effectiveness rating of four or five (with 5 being the highest ranking.)A November 2006 survey conducted by the Collins Center for Public Policy indicated that 88% of the respondent voters rated supervisors as "Excellent-Good" in providing voter information during the election period.

	○ In the *Report on Voter Education Programs During the 2008 Election Cycle* (2009), the Department found the Supervisors of Elections took a proactive role in educating citizens about the election process and their rights and responsibilities, and motivating them to participate in that process. An increase in new voter registration (by 813,000) and a 75.2% voter turnout during the 2008 Election was attributed in part to voter education efforts. All of the broad voter education categories listed in the report received an effectiveness rating of four or five (with five being the highest ranking). ▪ ***Overvote and Undervote Reports*** 1. The *Analysis and Report of Overvotes and Undervotes for the 2006 General Election* (January 31, 2007) continued to examine the "factors relating to no valid votes being cast." No valid vote refers to the combined uncounted votes due to overvotes, undervotes, and invalid write-in votes. The report concluded that "combined under and overvote rate is a function of the contest of interest and the data strongly suggested that it is cyclical with the type of general election (presidential or gubernatorial)." 2. *Analysis and Report of Overvotes and Undervotes for the 2008 General Election* (January 31, 2009) examined the impact of the change in voting method due to Florida's shift to optical scan or marksense ballot voting. The analysis reveals an overall increase in the combined 'no valid rate' from 0.41% for 2004 to .75% for 2008. A comparison of the 2002 and 2006 Governor's races with the 2004 and 2008 Presidential races showed that the "no valid vote" rate is race dependent. The overvote rate increased for all 67 counties in the 2008 General Election but the increase was attributed to the change in 15 counties that switched to optical scan voting from touch screen voting where the technology prevented an overvote. With the change in voting method, the 2008 Presidential overvote rate is 0.28% compared with 0.05% for the 2004 results. The 2008 Presidential undervote rate of 0.26% improved from 0.36% in 2004. The invalid write-ins for 2008 increased to 0.22% from the 2002 rate of 0.08% and 0.06% in 2006. Florida had 35,874 provisional ballots with a 48.1% rejection rate. Of the remaining accepted provisional ballots, the combined "no valid vote" rate was 1.15% with an undervote rate of 0.39% and an overvote rate of 0.76%. The order of increasing "no valid votes" in early voting, election day, absentee, and provisional ballot implies that the voter has an increasing risk of not casting a valid vote without having the voting system alert if there is an overvote or blank ballot using the absentee method or casting a provisional ballot. In conclusion, the increase in the combined 'no valid vote' was attributed primarily to overvotes, invalid write-ins, and particular voting method. The Bureau of Voting Systems Certification (BVSC) found no difference in the 'no valid rate' between paper ballots that used 'oval' versus 'arrow' selection targets, regardless of the voting system. All reports are posted and available for download on the Division of Elections' website at: http://elections.myflorida.com/reports.

Element 4- Voting System Guidelines and Processes	
2004-2006	The State of Florida certified three accessible voting systems vendors that provide audio ballot capability. Each accessible voting system includes at least one accessible voter interface device installed in each polling place. The State of Florida met the January 1, 2006 deadline for this HAVA planning element. The accessible voting systems performed as designed during the 2006 statewide Primary and General Elections.
2007-present	The Bureau of Voting Systems Certification (BVSC) is conducting an extensive review and revision of Department rules relating to voting system certification standards, purchase and sale, minimum security procedures, and uniform ballot design.

2009 Update to Florida's HAVA State Plan: Element 12

Element 5- HAVA Election Fund	
2004-2006	There were no structural changes to the HAVA trust fund.
2007-present	There were no structural changes to the HAVA trust fund.

Element 6- HAVA Budget	
2004-2006	Florida's FY 2006-07 budget is $11,015,598. The two largest budget items for this fiscal year are approximately $5.5 million for Election Administration and $4.9 million for the new Florida Voter Registration system (FVRS). The HAVA Planning Committee (2006) reviewed and recommended the following proposed HAVA budget for the next four fiscal years with all funding supporting the FVRS and election administration activities: FY 2007-08 $10,917,216 FY 2008-09 $11,064,642 FY 2009-10 $11,216,490 FY 2010-11 $11,372,894
2007-present	• ***Voter registration System.*** To date, the State has spent approximately $28 million on the development, maintenance and operation of the FVRS. • ***Voting Systems.*** In 2007, the Florida Legislature appropriated $22,968,625 to assist 15 counties in the conversion from touch screen voting systems to optical scan voting systems in accordance with state law mandate. An additional grant of $4,893,225 was disbursed to 28 counties to help buy Ballot-on-Demand equipment for use in early voting. • ***Federal Election Activities.*** The Florida Legislature appropriated a total of $2 million in fiscal year 2007-08 and $3 million in fiscal year 2008-09 for the counties under the category of "federal election activities." Funds disbursed under this category can be used for election administration activities such as voter education, poll worker recruitment and training, revisions to the statewide poll worker curriculum, standardizing elections results reporting, and other federal election activities as approved by the state. Before receiving these funds, the Supervisor of Election must submit a detailed program plan on how those funds will be spent and the chair of the Board of County Commissioners must certify that the respective county has provided 15% in matching funds. • ***HAVA Oversight and Reporting.*** The actual costs for oversight and reporting for the fiscal year 2006-07and 2007-08 were $188,091 and $170,737, The estimated costs for the following fiscal years are: ✓ FY 2008-09 $288,660 ✓ FY 2009-10 $293,993 ✓ FY 2010-11 $299,433 ✓ FY 2011-12 $304,982 • ***State Management -HAVA Planning Committee (2009).*** The HAVA State Planning Committee met once to determine material changes to the HAVA State Plan since the Plan was last updated in 2006. The Division of Elections provided administrative support.

2009 Update to Florida's HAVA State Plan: Element 12

	• ***Proposed Budget.*** The HAVA Planning Committee (2009) reviewed and recommended the following proposed HAVA budget for the next four fiscal years as set forth here and in more detailed in revised charts contained in Element #6: ✓ FY 2008-09 $10,151,040 ✓ FY 2009-10 $10,177,750 ✓ FY 2010-11 $12,306,811 ✓ FY 2011-12 $10,633,278

Element 7- Maintenance of Effort	
2004-2006	A 2006 Auditor General Report (2006-194) determined that Florida's Maintenance of Effort is $3,570,408. The audit also revealed that in FY 2004-05, Florida did not meet the required maintenance of effort by $7,630. Year-end expenditures for the fiscal year 2005-06 exceeded the maintenance of effort by $207,186. This amount, more than compensated for the $7,630 shortfall for the fiscal year 2004-05.
2007-present	The Department's expenditures in FY 2006-07 to support the maintenance of effort were $3,810,939.56 which exceeded the required amount of $3,570,408 (i.e., by $240,531.56). In FY 2007-08, the Department's expenditures to support the maintenance of effort were $3,587,102.38 which exceeded the required maintenance of effort by $16,694.38.

Element 8- Performance Measures	
2004-2006	The HAVA Planning Committee (2006) approved the following changes to the performance measures: • The goal to certify voting systems for voters with disabilities has been achieved. Accessible voting machines including non-visual accessibility for the blind and visually impaired are in each polling place. • The Florida Voter Registration System (FVRS) is operational. The Department of State will continue to monitor list maintenance activities performed by the Supervisors of Elections and FVRS security operations for compliance with HAVA. • The Department of State will collect from each county the reason why a person voted a provisional ballot in order to improve the registration process.
2007-present	By 2012, each voter accessible interface device already compliant with HAVA requirements must satisfy new state law to allow persons with disabilities to vote on devices using marksense ballots.

Element 9-Administrative Complaint Process	
2004-2006	There were no changes for this element of the HAVA State Plan.
2007-present	No material changes exist.

Element 10- Effect of Title One Payments	
2004-2006	Florida received $26,028,957 in Title I funds. These Title I funds have been used since 2003 to improve Florida election administration including replacing voting systems, educating voters, and improving access for voters with disabilities. In FY 2004-05 and 2005-06, local governments received $3 million each year for comprehensive voter education efforts. In FY 2004-05, the Legislature appropriated $11.6 million to assist local governments with purchasing one accessible voting system for each polling place. However, these funds were distributed from Title II. The HAVA Planning Committee (2006) recommended using the Title I funds as needed for election administration activities such as printing new voter registration application forms, translating election materials, printing documents and publications, preparing training videos or other election administration activities. (Pursuant to Funding Advisory Opinion 08-005 issued by the U.S. Election Assistance Commission, HAVA funds may not be used to print, copy or revise State voter registration forms or to conduct voter registration drives.) The HAVA Planning Committee (2006) also recommended that the Florida Legislature encourage vendors to continue to develop enhancements and new technologies that meet or exceed federal and state requirements for accessibility in voting systems and polling places. Although not part of Title I funds, the Department has received from the U.S. Department of Health & Human Services (HHS) four grants to improve polling place accessibility. These grants totaled $2,203,909.
2007-present	▪ ***Polling Place Accessibility for Persons with Disabilities***. Since 2006, the Department has received two more HHS grants to improve polling place accessibility. The total amount for all grants received to date is $3,494,444. ▪ ***Voter Education Regarding Voting Procedures, Voting Rights and Voting Technology***. See expenditures for Federal Elections Activities under Element #6 in chart.

Element 11- HAVA State Plan Management Section	
2004-2006	No substantive changes were made to the HAVA State Plan Management Section.
2007-present	No material changes.

Element 12- HAVA Changes in State Plan for Previous Fiscal Year	
2004-2006	The HAVA State Plan was updated to reflect changes from FY 2004-05.
2007-present	See 2009 amendments to 2006 HAVA State Plan.

2009 Update to Florida's HAVA State Plan: Element 12

Element 13- HAVA State Plan Development and Planning Committee	
2004-2006	The HAVA Planning Committee (2006) met once in Pensacola and once in Miami during Fall 2006 to update the HAVA State Plan. The HAVA Planning Committee (2006) consisted of 12 members, eight members of whom had not served before: 1. The Honorable Lester Sola, Supervisor of Elections, Miami-Dade County 2. The Honorable Terry Vaughn, Supervisor of Elections, Bradford County 3. The Honorable Bill Posey, State Senator, District 24, Rockledge, FL 4. The Honorable Ron Reagan, State Representative, District 67, Sarasota, FL 5. Mr. Richard Perez, Attorney, Holland and Knight, Miami, FL 6. Dr. Alec Yasinsac, Professor, Florida State University, Tallahassee, FL 7. Mr. Reggie Mitchell, Counsel for the People for the American Way Foundation, Tallahassee, FL 8. Ms. Sallie Parks, former Pinellas County Commissioner, Palm Harbor FL
2007-present	The HAVA Planning Committee (2009) met once in Tallahassee, Florida on March 23, 2009. The Committee (2009) consisted of: *Chairman* The Honorable Kurt S. Browning, Secretary of State, *Members* The Honorable Lois Benson, Pensacola, FL The Honorable Kenneth W. Detzner, Tallahassee, FL The Honorable Penny Halyburton, Supervisor of Elections for St. Johns County, St. Augustine, FL Mr. Richard LaBelle, Executive Director Family Network on Disabilities of Florida, Inc., Clearwater, FL Mr. Randy Long, Florida Association of Court Clerks and Comptrollers, Tallahassee, FL Mr. Reginald J. Mitchell, Esq., Law Offices of Reginald J. Mitchell, Esquire Mr. Charlie Parker, Tampa Mr. Richard Perez, Esq., Holland and Knight, Miami, FL The Honorable Brenda Snipes, Supervisor of Elections for Broward County, Ft. Lauderdale, FL The Honorable Lester Sola, Supervisor of Elections for Miami-Dade County, Miami, FL The Honorable Marjorie Turnbull, Tallahassee The Honorable Andy Gardiner, State Senator, District 9, Orlando, FL, The Honorable Richard Glorioso, House Representative, District 62, Plant City, FL

This 2009 Update to Element 13 replaces in its entirety Element 13 as written on pages 104-110 of the 2006 HAVA State Plan.

Element 13. State Plan Development and HAVA Planning Committee

Section 254(a)(13): A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

1. Introduction

To comply with the requirements of the Help America Vote Act of 2002 (HAVA), the HAVA State Plan must be developed by the chief State election official through a committee of appropriate individuals. After a preliminary plan is developed, it must be published for public inspection and comment. State officials must take public comments into account in preparing the HAVA State Plan submitted to the Elections Assistance Commission.

2. Compliance: Designation and Meetings of HAVA State Planning Committee

Yes, and no further actions are required.

Florida's Secretary of State is the Chief State Election Official and has the responsibility under HAVA to develop the HAVA State Plan with the assistance of the statewide HAVA Planning Committee. Section 255(a) of HAVA requires that "The chief State election official shall develop the HAVA State Plan under this subtitle through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the State, other local election officials, stakeholders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official."

Members of the 2009 Planning Committee for the State of Florida included:

Chairman:
Kurt S. Browning, Florida Secretary of State

Chief Election Officials of the Two Most Populous Jurisdictions within the State:
Brenda Snipes, Supervisor of Elections for Broward County
Lester Sola, Supervisor of Elections for Miami-Dade County

Other Local Election Officials:
Penny Halyburton, Supervisor of Elections for St. Johns County

Stakeholders/Representatives of Groups of Individuals with Disabilities:
Richard LaBelle, Executive Director of the Family Network on Disabilities of Florida, Inc.

Other Stakeholders and Citizens:
Kenneth W. Detzner

Lois Benson
Randy Long, Florida Association of Court Clerks and Comptrollers
Reggie J. Mitchell, Law Offices of Reginald J. Mitchell
Charlie Parker
Andy Gardiner, State Senator, District 9
Richard Glorioso, State Representative, District 62
Marjorie Turnbull
Richard Perez, Esq., Holland & Knight LLP

Members of the prior HAVA Planning Committees were as follows:

2003 HAVA Committee

Jim Smith, Chairman
Smith, Ballard and Logan

Kurt Browning
Supv. of Elections, Pasco County

Joe Celestin
Mayor, City of North Miami

Anna Cowin
State Senator --District 20

Dave Evans
National Federation of the Blind

Susan Gill
Supv. of Elections, Citrus County

Jane Gross
Florida League of Women Voters

Lindsay Harrington
State Representative --District 72

Arthur Hernandez, Esq.
Attorney at Law

Shirley Green Knight
Supv. of Elections, Gadsden County

Jim Kracht
Miami-Dade County

Richard LaBelle
Fla. Coalition on Disability Rights

David Leahy
Supv. of Elections, Miami-Dade County

Percy Luney
Florida A & M University

2004 HAVA Committee

Jim Smith, Chairman
Smith, Ballard and Logan

Kurt Browning
Supv. of Elections, Pasco County

Anna Cowin
State Senator, District 20

Jennifer Carroll
House of Representatives

Joe Celestin
Mayor, City of North Miami

David Evans
National Federation of the Blind

Susan Gill
Supv. of Elections, Citrus County

Jane Gross
Florida League of Women Voters

Arthur Hernandez, Esq.
Attorney at Law

Constance Kaplan
Supv. of Elections, Miami-Dade County

Shirley Knight
Supv. of Elections, Gadsden County

Jim Kracht
Florida Council of the Blind
American Council of the Blind

Richard LaBelle
Attorney at Law

2006 HAVA Committee

Jim Smith, Chairman
Smith, Ballard and Logan

Kurt Browning
Supv. of Elections, Pasco County

Jim Kracht
Miami, Florida

Richard La Belle, Esq.
Family Network on Disabilities of Florida, Inc.

Reggie Mitchell, Esq.
People For the American Way Foundation

Bill Posey
State Senator, District 24

Richard Perez, Esq.
Holland and Knight

Sallie Parks
Former Pinellas County Commissioner

Ron Reagan
State Representative, District 67

Lester Sola
Supv. of Elections, Miami-Dade County

Brenda Snipes
Supv. of Elections, Broward County

Terry Vaughan
Supv. of Elections, Bradford

Reggie McGill
City of Orlando

Miriam Oliphant
Supv. of Elections, Broward County

Isis Segarra
Tampa, Florida

Lori Stelzer
Florida Association of City Clerks

Raiza Tamayo
US Hispanic Chamber of Commerce

Percy Luney
FAMU Law School

Reggie McGill
City of Orlando

Brenda Snipes
Supv. of Elections, Broward County

Lori Stelzer
Florida Association of City Clerks

Isis Segarra
Tampa, Florida

Raiza Tamayo
U.S. Hispanic Chamber of Orlando

County

Dr. Alec Yasinsac
Florida State University

The HAVA Planning Committee (2006) convened two publicly noticed meetings to update the June 2004 version of the State Plan—Pensacola, Florida, on September 21, 2006, and Miami, Florida, on October 12, 2006. The Collins Center for Public Policy, Inc. a non-profit, non-partisan organization and the Florida Department of State's Division of Elections served as staff for the committee.

The HAVA Planning Committee (2009) convened for one meeting to discuss and develop changes to the 2006 HAVA State Plan. The meeting was held in Tallahassee, Florida, on March 23, 2009. The Florida Department of State's Division of Elections provided administrative support.

3. Compliance: Public Notice and Comments for State Plan

Yes, and no further actions are required.

Section 256 of HAVA requires that the HAVA State Plan meet the following public notice and comment requirements:

(1) not later than 30 days prior to the submission of the plan, the State shall make a preliminary version of the plan available for public inspection and comment;
(2) the State shall publish notice that the preliminary version of the plan is so available; and
(3) the State shall take the public comments made regarding the preliminary version of the plan into account in preparing the plan that will be filed with the Election Assistance Commission.

Each HAVA Planning Committee has operated in an open process with public deliberations, systematic procedures in accordance with *Robert's Rules of Order*, and majority vote of members who were present when votes were taken. Members of the public and press are welcomed at the meeting and public comments solicited.

All meetings are held in accessible facilities and are compliant with the Americans with Disabilities Act. Closed captioning service is available, upon advanced request, at all meetings. Agendas are printed in Braille as well as Spanish and Creole, upon advanced request. The HAVA Planning Committee receives a draft of the plan before voting to approve the preliminary draft. The Committee forwards the draft to the Division of Elections for public notice and open comment period. Staff for the Division of Elections is delegated authority to make necessary edits to ensure consistency and accuracy of text and format of the final draft.

After notice is given in the *Florida Administrative Weekly*, the preliminary version or revision of HAVA State Plan is posted on the Department of State's website. A link is made available on the Department's website for receiving public comments. The work of the HAVA Planning Committee is completed when a preliminary version of the HAVA State Plan is prepared, approved by the HAVA Planning Committee, and submitted to the Secretary of State.

After the HAVA State Plan is submitted to the U.S. Election Assistance Commission, the Commission is responsible for publishing the HAVA State Plan in the <E T='04'>Federal Register</E> in accordance with Section 255(b).

Help America Vote Act of 2002 State Plan Chart

Help America Vote Requirement	2006 Status: HAVA State Plan	2006 Status: HAVA State Plan
Voting Systems--Section 301 Compliance January 1, 2006)		
Verify Ballot	Complies	Complies
Change or Correct Ballot	Complies	Complies
Prevent Overvotes	Complies	Complies
Absentee instructions	Complies	Complies
Absentee privacy and confidentiality	Complies	Complies
Paper record for audits	Complies	Complies
Systems for voters with disabilities	Complies	Complies
Future voting systems purchases comply with HAVA	Complies	Complies
Alternative language accessibility	Complies	Complies
Comply with FEC error rates	Complies	Complies
Define what constitutes a vote	Complies	Complies
Provisional Voting and Voter Information--Section 302 (Compliance January 1, 2004)		
Laws require notification to cast provisional ballot	Complies	Complies
Provisional ballots permitted with written affirmation of voter eligibility	Complies	Complies
Provisional ballots given to election officials for determination	Complies	Complies
Provisional ballots counted if voter is determined to be eligible	Complies	Complies
Voters provided information to ascertain if provisional ballot counted	Complies	Complies
"Free access system" provided to ascertain if provisional ballot counted	Complies	Complies
Sample ballots are posted for election	Complies	Complies
Date of election and polling place hours are posted	Complies	Complies
Voting instructions and provisional voting instructions are posted on	Complies	Complies

2009 Update to Florida's HAVA State Plan: Element 13

Help America Vote Act of 2002 State Plan Chart		
Help America Vote Requirement	**2006 Status: HAVA State Plan**	**2006 Status: HAVA State Plan**
election day		
Voting instructions for mail-in registrants and first-time voters on election day	Complies	Complies
Voting rights information and provisional ballot information posted	Complies	Complies
Contact information posted for voters whose rights have been violated	Complies	Complies
Information posted on prohibition of fraud and misrepresentation	Complies	Complies
Provisional ballots segregated for those who vote after special extended poll hours	Complies	Complies
Voter Registration--Section 303 (Compliance January 1, 2004 or extension January 1, 2006)		
Single, uniform, official centralized, interactive computer statewide, voter registration list	Complies	Complies
Can Florida meet January 1, 2004 deadline? Need to apply for January 1, 2006 waiver	Complies	Complies
HAVA's ID requirements for voters who register by mail and not previously voted	Complies	Complies
HAVA's requirement for voter registration language in mail registration forms	Complies	Complies
Local Government Payments and Activities [Section 254(a)(2)]		
Describe criteria for funding	Complies	Updated
Describe methods to monitor performance	Complies	Updated
Voter Education [Section 254(a)(3)]		
Describe voter education programs to support Title III	Complies	Updated
Describe election official education and training to support Title III	Complies	Updated
Describe poll worker training to support Title III	Complies	Updated
Voting System Guidelines and Processes [Section 254(a)(4)]		
Describe Florida's voting system guidelines and processes consistent with Section 301	Complies	Complies
HAVA Election Fund [Section 254(a)(5)]		
Describe how Florida will establish a HAVA fund	Complies	Updated
Describe how Florida will manage the HAVA fund	Complies	Updated
Florida's HAVA Budget [Section 254(a)(6)]		
Describe costs of activities to meet Title III	Complies	Updated
Describe portion of requirements payment to carry out requirements activities	Complies	Updated
Describe portion of requirements payment to carry out other activities	Complies	Updated
Florida's Maintenance of Effort [Section 254(a)(7)]		
Describe how Florida will maintain election expenditures at the 1999-2000 FY	Complies	Updated
Florida's Performance Goals and Measures [Section 254(a)(8)]		
Describe how Florida will adopt performance goals measures to determine HAVA success	Complies	Updated
Administrative complaint process [Section 254(a)(9)]		

2009 Update to Florida's HAVA State Plan: Element 13

Help America Vote Act of 2002 State Plan Chart		
Help America Vote Requirement	**2006 Status: HAVA State Plan**	**2006 Status: HAVA State Plan**
Established a state-based administrative complaint process to remedy grievances	Complies	Complies
Effect of Title I Payments [Section 254(a)(10)]		
Describe how Title I payments will affect activities of HAVA plan	Complies	Updated
HAVA State Plan Management [Section 254(a)(11)]		
Describe how Florida will manage plan and make material changes to plan	Complies	Updated
HAVA State Plan for Previous Fiscal Year [Section 254(a)(12)]		
Describe how this year's plan changed from the previous fiscal year	Complies	Updated
HAVA State Plan Development and Planning Committee [Section 254(a)(13)]		
Describe the committee and procedures used to develop the HAVA plan	Complies	Updated

STATE OF OHIO 2009 AMENDMENTS TO THE STATE HAVA PLAN

Amending Ohio's State Plan
to Implement the Help America Vote Act of 2002,
As Revised January 12, 2005
And Recorded in the Federal Register, Vol. 70, No.66, April 7, 2005

Ohio Secretary of State

May 5, 2009

Gineen Bresso Beach, Chair
United States Election Assistance Commission
1225 New York Ave., NW – Suite 1100
Washington DC 20005

Dear Ms. Beach:

I am pleased to submit to you the State of Ohio 2009 Amendments to the State HAVA Plan. Ohio's State Plan was initially adopted in May 2003 and revised in January 2005. Although Ohio has not materially changed its plan since that time, it is appropriate that these Amendments be filed in order to reflect the following:

1. My status since January 8, 2007, as Ohio Secretary of State, and chief elections officer.
2. The current membership of Ohio's State Plan Committee.
3. Ohio's plans for using approximately $4.4 million in additional HAVA requirements payments authorized by Congress in the FY08 Appropriations Bill.

The 2009 Amendments have been developed in accordance with section 255 of HAVA, and the requirements for public notice and comments required by section 256 of HAVA.

It is my privilege to thank you, on behalf of all Ohio voters, for the accomplishments of the Elections Assistance Commission (EAC). I look forward to continued cooperation between Ohio and the EAC as we work together to fully implement Congressional intent in appropriating additional HAVA funds to further improve the administration of federal elections in Ohio.

Any public comments about the State of Ohio 2009 Amendments to the State HAVA Plan may be directed via e-mail at *info@sos.state.oh.us* or by mail to the office of the Ohio Secretary of State, Attn: General Counsel, 180 East Broad Street, 15th Floor, Columbus, OH 43215.

Sincerely,

Jennifer Brunner

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MEMBERS OF OHIO HAVA STATE PLAN COMMITTEE AND DEVELOPMENT OF 2009 AMENDMENTS TO THE STATE HAVA PLAN

In the spring of 2008, and in compliance with Section 255 and 256 of HAVA, Secretary of State Jennifer Brunner identified and appointed to the HAVA State Plan Committee individuals who agreed to serve as members. On April 7, 2008, Ohio Secretary of State Jennifer Brunner convened the first meeting of the reconstituted Ohio State HAVA Plan Committee. The committee's task was to review Ohio's existing State Plan, as revised in January 2005, and to approve a plan for expending the FY 2008 Requirements Payments allocated by Congress to Ohio.

The following Ohioans served as members of the Committee:

- Brian E. Shinn, Chair, Assistant General Counsel & Elections Counsel, Ohio Secretary of State
- Brett Harbage, ADA Coordinator, Ohio Secretary of State
- Leslye Huff, Attorney and Civil Rights Activist; Ohio Voting Rights Institute Advisory Council member
- Shannon Leininger, Past President, Ohio Association of Election Officials; Director, Ashland County (Ohio) Board of Elections; Ohio Voting Rights Institute Advisory Council
- Jeffrey A. Matthews, Deputy Director, Stark County (Ohio) Board of Elections
- Jane Platten, Director, Cuyahoga County (Ohio) Board of Elections (chief election official of most populous jurisdiction)
- Pierrette "Petee" Talley, Secretary-Treasurer, Ohio AFL-CIO; Ohio Voting Rights Institute Advisory Council
- Michael Stinziano, Director, Franklin County (Ohio) Board of Elections (chief election official of second most populous jurisdiction) (October 3,2008 to date)

The Committee was supported by the following members of Secretary Brunner's staff:

- Eleanor Speelman, General Counsel, Ohio Secretary of State
- Ann L. Hosutt, Administrative Aide, Legal Coordinator, Ohio Secretary of State

The first committee meeting was called to order on April 7, 2008. At the initial meeting, the existing state plan was reviewed and the application procedure for FY 2008 Requirements Payments discussed. Committee members were provided draft language to be considered for

inclusion in the State Plan Amendments. Thereafter, committee members were provided an opportunity to provide additional input and comments.

On February 9, 2009, committee members were provided a draft of the State of Ohio 2009 Amendments to the State HAVA Plan. On March 9, 2009, the committee members convened and a vote was taken on the draft. The draft was approved by a vote of 6 to 0, with two members absent.

The Secretary thereafter issued notice through a public press release and posting on the Secretary's Web site, *www.sos.state.oh.us.* The notice advised that the Proposed 2009 Amendments to the State of Ohio HAVA Plan were available for review and submission of public comment either personally at the Secretary's office at 180 East Broad Street, 1st Floor, Columbus Ohio, 43215 by mail to the same address, and on the Secretary's Web site at *www.sos.state.oh.us.* The period for public comment was from March 17, 2009 to April 17, 2009, a period of over 30 days.

On April 29, 2009, the Ohio HAVA State Plan Committee voted to approve the 2009 Amendments to the State of Ohio HAVA Plan. The Plan is now submitted to the Elections Assistance Commission for its review and for publication in the Federal Register.

USE OF FY 2008 REQUIREMENTS PAYMENTS TO AID IN THE ADMINISTRATION OF FEDERAL ELECTIONS

Ohio is pleased to report that it has met the requirements established in Title III of HAVA, 42 U.S.C Section 15301 et seq., as summarized below.

HAVA Section 301 requires that Ohio use "voting systems" (both hardware and software) that meet certain criteria, including:

- Voter verification before the ballot is cast.
- Notice of overvotes, and opportunity to correct.
- Audit capacity of voting systems.
- Accessibility for individuals with disabilities.
- Voting system must meet error rates within EAC standards.

All 88 Ohio counties have replaced older punch card and other non-HAVA compliant voting machines with voting systems that meet the criteria listed above. Ohio has therefore met the requirement established in Sec. 301 of HAVA Title III.

HAVA Section 302 requires that Ohio provide for provisional voting and posting of voting information at polling places. This requirement has been implemented statewide in Ohio. Ohio therefore has met the requirement established in Sec. 302 of HAVA Title III.

HAVA Section 303 requires that Ohio establish a computerized statewide voter registration database that meets certain criteria, including:

- Ongoing maintenance of the database, e.g., removal of names, while also providing safeguards to ensure that eligible voters are not removed in error.
- Ensuring "technological security" to prevent unauthorized access to the computerized database
- Ensuring that voter registrations include certain identifying information (driver's license number, last 4 SSN digits or other identifying number).
- Matching of voter database to motor vehicle database.
- Providing for voter registration by mail with certain documentation.

Ohio has established a computerized statewide voter registration database as described above. Ohio therefore has met the minimum requirements established in Sec. 303 of HAVA Title III.

On April 24, 2007, Ohio's chief election officer, Secretary of State Jennifer Brunner, filed the certification established in Section 251(b)(2) (B) of HAVA.

Ohio therefore is eligible to use the FY2008 Requirements Payment to carry out the purposes enumerated in Section 101 of HAVA and is not legally constrained to use those funds only for purposes required by Title III of HAVA. Thus, Ohio may use the FY 2008 Requirements payment for the following Section 101 purposes:

A. Further improving the systems implemented as a requirement of Title III of HAVA (including the statewide voter registration database);

B. General activities that will improve the administration of elections for federal office;

C. Educating voters concerning voting procedures, voting rights, and voting technology;

D. Training election officials, poll workers, and election volunteers;

E. Developing and amending the State Plan;

F. Improving, acquiring, leasing, modifying, or replacing voting systems, and technology and methods for casting and counting votes;

G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities; and

H. Further improving the toll-free telephone hotline that voters may use to obtain general information concerning elections and to report possible voting fraud and voting rights violations.

Ohio intends to use the FY 2008 Requirements Payments consistent with these Section 101 purposes as further described in this Plan Document. On July 1, 2008, the first day of Ohio's FY 2009, Ohio had a remaining balance of approximately $4.2 million of funds attributable to prior HAVA payments. Combined with the anticipated $4.4 million FY 2008 Requirements allocated to Ohio, Ohio anticipates a balance of approximately $8.6 million (plus interest earnings of an estimated $ 0.7 million) for a total of $9.3 million of HAVA funds to use in carrying out HAVA activities going forward.

Ohio anticipates a need for some flexibility in determining specific uses. It does, however, intend to use HAVA funds as described in the remainder of this Plan Document, as well as for new initiatives as needs arise that will, in combination with state funds, serve to improve the administration of federal elections in Ohio.

Further Improvement of Implemented Title III Requirements

The Secretary has established several HAVA-funded positions within her office to assure that the requirements of Title III, having now been implemented, continue to be fully maintained and improved, as follows:

ADA Compliance

The elimination of barriers to voting for persons with disabilities continues to be a priority in Ohio. HAVA requirements payments will fund two positions in the Secretary of State's office to administer ADA compliance throughout the Ohio elections system. The ADA Coordinator and ADA Specialist work to ensure access to voting for persons with disabilities, to educate persons with disabilities about voting, provide training for election officials and poll workers on how best to include individuals with disabilities in the election process, and to assess current and potential polling locations to support board implementation and compliance with state and federal accessibility laws. The individuals in these positions also administer the HAVA Section 261/Health and Human Services subgrant program for local election officials in Ohio.

Those positions, and the individuals who hold those positions as of May 2009, are:

ADA Coordinator – Brett Harbage – Responsible for ensuring that people with disabilities have access to the voting process. This includes educating voters with disabilities about their rights, educating election officials and poll workers on how best to include people with disabilities, assessing whether polling locations are accessible, and administering the HAVA Section 261/Health and Human Services grant program.

ADA Specialist – Joy West – Responsible for ensuring that people with disabilities have access to the voting process. This includes assisting the coordinator in outreach, voter education, poll worker training, and administering HAVA Section 261/Health and Human Services grant funds.

Ohio plans to use HAVA funds to continue funding these positions in FY2009 and thereafter. The Secretary of State will continue to train and educate election officials and poll workers to ensure full participation of individuals with disabilities in the election process.

In addition, to the extent that Ohio elects to use any FY 2008 Requirements Payments for the purchase of new voting systems, or components thereof, the voting system will meet the voting system standards for disability access as set forth in Section 301(a)(3).

Information Technology

Ohio utilizes information technology extensively in its ongoing efforts to comply with HAVA. HAVA requirements payments will supplement state funding of ongoing hardware and software maintenance licenses, a T-1 line connecting each of Ohio's 88 boards of elections with the Ohio Secretary of State's office, and other information technology hardware and software

improvements. Additionally, HAVA requirements payments will fund an Information Technology Developer position in the Secretary of State's office to develop, maintain, and modify HAVA related applications software and data processing projects. This position and the individual who holds this position as of May 2009, is:

Information Technology Developer – Srilalitha Sikharam – Responsible for developing, maintaining, and modifying HAVA related application software and data processing projects.

Statewide Voter Registration Database

Ohio continues to maintain and improve its statewide voter registration database, including increasing the compatibility of county boards of elections databases with the statewide database. HAVA requirements payments will continue to fund a Statewide Voter Registration Database Coordinator within the Secretary of State's office. The individual in this position researches and monitors all applicable HAVA requirements for the statewide voter registration database and works with information technology staff in the Secretary of State's office to maintain and improve the database. This position and the individual who holds this position as of May 2009, is:

Statewide Voter Database Coordinator – Position Vacant – Held by Gus Maragos through December 5, 2008 – Responsible for researching and monitoring all applicable HAVA requirements, policies, and laws in an effort to oversee the voter registration database, to advise the county boards of elections of their responsibilities in ensuring accuracy of the database and to make other recommendations where appropriate.

General Activities That Will Improve the Administration of Elections for Federal Office

Availability of Supplemental and Back-up Voting Options for Ohio Voters

The implementation of electronic voting systems in Ohio has generated substantial media coverage and public interest. Experience has shown that, in emergency situations where equipment problems have materialized on Election Day and in elections with very high voter turnout, back-up voting options are critical to ensure that no Ohio voter is turned away at a polling location or must wait in line for an unreasonable amount of time to exercise the right to vote. Counties employing direct electronic recording system (DREs) as their primary voting system benefit from the availability of back-up paper ballots at all polling places. HAVA requirements payments were used to offset the cost to counties of providing back-up paper ballots for federal elections during 2008.

DISTRIBUTION AND MONITORING OF REQUIREMENTS PAYMENT TO OHIO COUNTY BOARDS OF ELECTIONS

Ohio is pleased to describe its plans in regard to the possible distribution and monitoring of requirements payment to units of local government or other entities in the State for carrying out the activities described in its HAVA State Plan.

Criteria for determining eligibility of possible recipients. Ohio's State Plan authorizes the distribution of HAVA funds to one or more of Ohio's 88 county boards of elections, but to no other units of local government or any other state entity. Ohio's county boards of elections are responsible for conducting Ohio elections, including elections for federal office, and are therefore eligible recipients of HAVA funds. Ohio's boards of elections further play a crucial role in the maintenance of the computerized statewide voter registration database established during the administration of Secretary of State Brunner's predecessor.

Monitoring of performance of grant recipients. Ohio distributes to county boards of elections HAVA Section 261 funds, which are administered through the U.S. Department of Health and Human Services rather than the Elections Assistance Commission. These subgrants are used by county boards of elections to accomplish accessibility for individuals with disabilities at the precinct level and provide pollworker training concerning ADA accessibility.

The Secretary of State's office has established a system by which counties seeking HAVA Section 261 subgrants must first submit an application describing the proposed use of the HAVA/HHS funds. Prior to approval of a subgrant, Secretary of State staff review the application to assure that the proposed use is compliant with HAVA. Should Ohio distribute FY2008 Requirements Payments directly to county boards of elections, similar application procedures and review will be implemented and administered by the office of the Secretary of State to ensure that grant recipients use HAVA funds consistent with performance goals adopted in the State Plan.

In addition, the Secretary of State has established systems to assure that HAVA/HHS funds have been used in the manner stated on applications submitted by counties by requiring counties to choose between two methods of receiving those funds. Counties may chose a reimbursement method of payment, in which receipts demonstrate that expenses have been incurred consistent with the application. Alternatively, counties may choose a cash advance method in which the county must be prepared to spend the funds within 30 days of receipt. Use of the cash advance method requires the county to have fully planned an approved expenditure to minimize the amount of time HAVA/HHS funds remain at the county level prior to

expenditure. At the end of the 30-day advance, Secretary of State finance staff follow up with each county board of elections in order to obtain documentation e.g., receipts, that demonstrate that HAVA funds were used for HAVA purposes.

Ohio further has reimbursed counties for expenses incurred to supply back-up paper ballots for use in federal elections, a HAVA-compliant use, upon production of receipts or other documentation demonstrating those expenditures. In addition, Ohio has used HAVA funds to reimburse certain counties for expenses associated with delivery of voting machines, including equipment and materials, to polling locations in November 2008, in order to bring all Ohio counties in line with secure transportation guidelines.

Moreover, the Secretary of State has employed 16 regional liaisons, or "field representatives," two of whom concentrate on information technology at the county level. These employees, whose positions are funded currently through state funds rather than HAVA funds, are responsible for advising, assisting and monitoring county boards of elections in the performance of their duties. Secretary of State field representatives travel throughout their assigned counties regularly and will confirm that HAVA funds distributed to county boards of elections are used consistently with performance goals adopted in the State Plan.

USE OF REQUIREMENTS PAYMENTS TO PROVIDE EDUCATION TO VOTERS AND ELECTION OFFICIALS AND TO PROVIDE POLLWORKER TRAINING

Ohio is pleased to describe its plans in regard to voter education, election official and poll worker training.

Voter Education

In 2009, voter education continues to be a critical component of ensuring that all citizens who are eligible to vote are able to participate in the electoral process and that their votes are counted accurately. Additionally, election officials are experiencing growing demands from increased voter turnout at the polls, expanded absentee voting, complex election laws and procedures, and public and media scrutiny. These demands require elections officials to remain current in their knowledge and in their ability to perform their duties competently. Moreover, adequate training of poll workers in all counties in Ohio is essential to provide uniform standards for the efficient administration of elections at polling locations where most Ohio citizens will be exercising their right to vote. Ohio will continue to use HAVA requirements payments to supplement state general revenue funding for voter education initiatives and for training election officials and poll workers.

Secretary of State Jennifer Brunner created the Voting Rights Institute (VRI) as one means of implementing voter education programs in Ohio. VRI serves as a clearing house for voter questions and concerns, and works with community organizations to provide voter education. HAVA requirements payments will fund all or part of five positions in VRI, including administrative staff, outreach/education staff and a voter registration coordinator. HAVA requirements payments will also fund VRI programs and constituent inquiry tracking programs. Additionally, the Secretary of State will continue to provide public voter education materials through publications created by the Communications Division, Elections Division, and VRI and through the office's Web site, maintained by the Communications Division, to Ohio's boards of elections.

VRI positions partially or fully funded by HAVA funds include the following:

- **Director, Voting Rights Institute** – Kellye A. Pinkleton – Responsible for overseeing all aspects of VRI program delivery, staff direction and advising, and work to ensure Ohio's elections are free, fair, open and honest.
- **Program and Outreach Coordinator, Voting Rights Institute** – Christopher M. Hughes – Responsible for all VRI program development and outreach efforts as they pertain to voter education, program delivery and working to ensure free, fair, open and honest elections.
- **Project Coordinator, Voting Rights Institute** – Dean M. Hindenlang – Responsible for coordination of Secretary of State efforts to support NVRA agency activities, coordination and oversight for all VRI projects including Citizen Response Center activities, grants administration and research, and development & coordination of all VRI reporting tools.
- **Executive Assistant, Voting Rights Institute** – Claudia Galbreath – Responsible for assisting fellow staff members in all functions of VRI program delivery, administrative oversight and director functions, as assigned.
- **Education and Outreach Specialist** - Northern Region, Voting Rights Institute – Will Tarter – Responsible for implementation of division and agency voter education programs with focus on the northern region of the state. Assist Program and Outreach Coordinator in voter education projects and activities.

Election Official Training

Ongoing training of Ohio election officials, including the board members and staff at Ohio's 88 boards of elections, will continue to be funded in part by HAVA requirements payments. Dissemination of information to elections officials using current technology is an effective and efficient means of educating election officials. Therefore, the Secretary of State will utilize HAVA requirements payments to continue to provide each of the 88 Ohio county boards of elections with a T-1 line that allows rapid and secure communications between the Secretary of State's office and the boards of elections, including transmission of voter registration data for purposes of the HAVA-mandated statewide voter registration database, e-mails, directives, advisories and

memoranda regarding the interpretation of election laws and other election administration matters.

Poll Worker Training

HAVA requirements payments have also been used to significantly enhance the Secretary of State's poll worker training initiatives and to augment the boards of elections' poll worker training programs through the employment of a staff member and the funding of training materials. The position of Elections Training and Curriculum Development Specialist was created within the Elections Division to develop and administer poll worker training programs, including an online poll worker training program that is available on the internet to all county boards of elections and to the public. The Elections Training and Curriculum Development Specialist has also developed a poll worker training manual for boards of elections and quick reference Election Day materials for poll workers. These resources allow for the establishment of uniform standards for poll worker training for all county boards of elections in Ohio and permit counties with limited resources the opportunity to provide their poll workers with professionally developed training that is specific to Ohio and its elections systems and administrative procedures. This position is fully funded using HAVA funds.

Elections Training and Curriculum Development Specialist – Laura Pietenpol – Responsible for researching and developing elections-related curriculum and training materials for several different audiences (boards of elections, poll workers and volunteers), in a variety of formats (manuals, posters, online, videos, etc.).

PROPOSED BUDGET FOR HAVA APPROPRIATIONS

Ohio is pleased to present the Ohio HAVA Grant Fund Budget for state FY 2009 – 2011. Because the requirements of Title III have been met in Ohio, all expenditures described in the budget will be used to carry out purposes described in Titles I and II of HAVA.

On July 1, 2008, the first day of Ohio's FY 2009, Ohio had a remaining balance of approximately $4.2 million of funds attributable to prior HAVA payments. Combined with the anticipated $4.4 million FY 2008 Requirements Payments, plus an estimated $0.7 million interest earnings, Ohio will have a total of approximately $9.3 million of HAVA funds to use in carrying out HAVA activities going forward.

The expected uses of these funds appear in the budget outlined on page 13.

OHIO - HAVA GRANT BUDGET PLAN

	3 Year Plan State Fiscal Years 2009-2011
Spending Plan:	
Payroll (10 positions)	$ 2,200,000
Hardware/Software Maintenance Licenses	$ 400,000
County BOE T-1 Lines	$ 1,300,000
Other Maintenance & Equipment (Travel, Provisional Ballot Hotline, etc.)	$ 300,000
Ongoing Operating Costs:	$ 4,200,000
IT Hardware/Software Expansion	$ 1,000,000
Election Night Reporting System	$ 100,000
Voting Machine Certification Standards & Guidelines	$ 100,000
Pollworker Training Initiatives (On-Line, Manuals, Flip Charts, etc.)	$ 900,000
County Reimbursement - Pollworker Training	$ 200,000
County Reimbursement - Paper Ballot Printing	$ 700,000
County Reimbursement - Voting Machine Delivery/Transportation	$ 100,000
VRI - Voter Education Initiatives	$ 200,000
Voter Education PSAs	$ 100,000
Other / Balance Available for HAVA Compliant Uses Consistent with Ohio State Plan, as revised 01/12/05	$ 1,700,000
Total Planned Expenses:	**$ 9,300,000**

OHIO'S SATISFACTION OF MAINTENANCE OF EFFORT REQUIREMENT

Ohio will meet its MOE requirement to maintain its funding effort at the same level that it expended money for HAVA funded activities in the fiscal year preceding November 2000 through non-HAVA historical elections administration funding mechanisms (e.g., amounts distributed to the Secretary of State from the Ohio General Revenue Fund and revenues generated through the Business Services Division of the office of the Secretary of State). The primary source of operating funds for the Ohio Secretary of State is from revenues generated through the Business Services Division of the office. In addition, just under $3 million annually is provided from the state's General Revenue Fund for office operations. These sources continue to provide ongoing support for the Elections Division, Elections Field Staff and the Campaign Finance section of the office. These traditional and ongoing funding sources clearly demonstrate that Ohio will meet its MOE requirements.

Ohio Maintenance of Effort

State Fiscal Year	Total Expenses
2000-base year	$ 1,336,489
2001	$ 1,424,521
2002	$ 1,447,974
2003	$ 2,030,605
2004	$ 2,693,115
2005	$ 2,357,656
2006	$ 2,076,446
2007	$ 2,590,099
2008	$ 2,822,230

PERFORMANCE GOALS AND MEASURES

The vast majority (approximately 85%) of HAVA funds received by Ohio to date have been spent on providing new voting equipment to Ohio's 88 counties. Implementation of new voting equipment was completed throughout Ohio prior to 2007.

Going forward, the Secretary of State has tasked her staff and the boards of elections together to perform the mission of assuring free, fair, honest and open elections. Because Ohio has met requirements established by Title III HAVA, as described on pages 1 - 2 of this Plan, the 2009 Amendments reflect Ohio's intent to use HAVA funds to continue to refine and improve the administration of elections using HAVA-compliant voting systems as described more fully throughout this document.

INTERPLAY OF HAVA TITLE I FUNDS WITH FY 2008 REQUIREMENTS PAYMENTS

Ohio has no HAVA Title I, Section 101 funds remaining. Because Title I funds are no longer available, no new activities will be funded through Title I expenditures.

ONGOING HAVA STATE PLAN MANAGEMENT

The plan will be managed by the chief elections officer of the State of Ohio, Ohio Secretary of State Jennifer Brunner, with the assistance of her appointees and staff, including the following:

- **Assistant Secretary of State** – Antoinette Wilson
- **Deputy Assistant Secretary of State and Director of Elections** – David Farrell
- **Deputy Assistant Secretary of State and Director of Legislative Affairs** – Mike Stinziano
- **Chief of Staff** – G. Thomas Worley
- **Chief Financial Officer** – Veronica Sherman
- **Chief Information Officer** – Bob Mangan
- **General Counsel** – Eleanor Speelman

The Secretary of State and her staff will follow the laws and policies of the State of Ohio, as well as best management practices in conformance with generally accepted principles and the direction of the Secretary of State.

In Ohio, significant aspects of election administration occur at the county level through the work of county boards of elections and their staffs. Because of the interconnectedness between the office of the Secretary of State and the county boards of elections, HAVA State Plan Management also requires strong management skills at the board level. Two educational conferences occur in Ohio each year at which board members and staff meet with representative Secretary of State employees and other presenters. These conferences provide local elections officers opportunities for dialogue, training and education, both with each other and with the Secretary.

Ohio Revised Code 3501.05 charges the Secretary of State with identified duties, including the following:

- Appoint all members of boards of elections.
- Issue instructions by directives and advisories to members of the boards as to the proper methods of conducting elections.
- Prepare rules and instructions for the conduct of elections.

- Compel the observance by election officers in the several counties of the requirements of the elections laws.
- Investigate the administration of election laws, frauds, and irregularities in elections in any county; and referral of election law violations for prosecution.
- Adopt administrative rules for the removal by boards of elections of ineligible voters from the statewide voter registration database.

These and other tools provided the Secretary of State by the Ohio Revised Code foster appropriate management of HAVA in Ohio.

In addition, the Ohio Revised Code requires the Secretary of State to issue reports outlining data collected concerning elections. This data, collected over future elections, will provide objective documentation of Ohio's progress in implementing the goals.

COMPARISON OF OHIO STATE PLAN INCLUDING 2009 AMENDMENTS TO OHIO STATE PLAN AS REVISED JANUARY, 2005

The most significant difference between the previous Ohio State Plan (as amended January 12, 2005) and the revised, amended Ohio State Plan is the fact that the original requirements of Title III have been implemented, as outlined below:

- Ohio has spent approximately $115 million to replace non-HAVA-compliant punch card and other voting systems in Ohio. Currently 53 Ohio counties employ direct electronic recording voting systems (DRE) as their primary voting system, and 35 counties use optical scan systems to tabulate votes cast on paper ballots as their primary voting system. In addition, every voting location in Ohio is equipped on Election Day with an electronic voting system that accommodates the needs of people with disabilities. Ohio intends to continue funding full-time positions within the office of the Ohio Secretary of State as described above to continue, in cooperation with other non-HAVA-funded Secretary of State Elections Division staff, to maintain and improve Ohio's computerized statewide voter registration database.
- Section 302 requirements concerning Provisional Voting and Voting Information have been implemented through legislation enacted by the Ohio General Assembly and directives issued by the Secretary of State, which carry the weight of law.
- Section 303 requirements concerning implementation and maintenance of a statewide voter registration list have been implemented. Although fully operational, additional HAVA funding is needed to implement improvements to the system. In addition, HAVA funding is needed to continue T-1 lines allowing electronic transmission of voter registration data from the 88 county boards of elections to the office of the Secretary, at a cost of approximately $432,200 annually. Software licenses and other expenses total $128,000 annually.

Accordingly, the 2009 Amendments reflect Ohio's intent to use HAVA funds to continue to refine and improve the administration of elections using HAVA-compliant voting systems.

In addition, the 2009 Amendments to the Ohio HAVA State Plan reflect Ohio's intent to use HAVA funds for the procurement of back-up paper ballots by Ohio counties that use DRE voting systems. In Ohio, back-up paper ballots may be required to be available for use by Ohio voters in the event of DRE system malfunctions, power outages or other emergencies and to alleviate long lines, should they occur, at polling places.

OHIO'S COMPLIANCE WITH 30-DAY PUBLIC NOTICE AND COMMENT REQUIREMENTS (HAVA SECTION 256)

The State has followed the 30-day public notice and comment requirements of Section 256 prior to final adoption of the 2009 Amendments to the Ohio State HAVA Plan.

OHIO'S ADMINISTRATIVE COMPLAINT PROCEDURE (HAVA Section 402)

The State has filed with the EAC a plan for the implementation of the uniform, non-discriminatory administrative complaint procedures required under Section 402 (or has included such a plan in the State plan), and has such procedures in place.

The complaint mechanism required under Section 402 is established in the existing Ohio State Plan and is available to the public through the official Web site of the Ohio Secretary of State.

OHIO'S COMPLIANCE WITH FEDERAL LAWS

The State is in compliance with each of the following federal laws as they apply to the Act:

- The Voting Rights Act of 1965;
- The Voting Accessibility for the Elderly and Handicapped Act;
- The Uniformed and Overseas Citizens Absentee Voting Act;
- The National Voter Registration Act of 1993;
- The Americans with Disabilities Act of 1990; and
- The Rehabilitation Act of 1973.

OHIO'S COMPLIANCE WITH TITLE II AND TITLE III PROVISIONS

Ohio's Amended State Plan reflects proposed HAVA expenditures consistent with the conclusion that, to the extent that any portion of the Title II requirements payment is used for activities other than meeting the requirements of Title III, the State's proposed uses of the requirements payment are not inconsistent with the requirements of Title III; and the use of the funds under this paragraph is consistent with the requirements of section 251(b). Ohio has already filed the certification established in Section 251(b)(2)(B) of HAVA (see Ohio's statement in response to Section 1(a) of this application). Ohio is therefore no longer limited to using FY 2008 requirements payments for only Title III purposes. Nor are any of Ohio's proposed uses contained in this Amended Stated Plan inconsistent with the requirements of Title III.

OHIO'S SATISFACTION OF STATE MATCH REQUIREMENT

The Election Assistance Commission has advised that state funds used exclusively for HAVA related purposes may be designated so as to satisfy the matching requirement of 42 USC §15403(b)(5) [HAVA 253 section]. A state may utilize previously allocated funds to satisfy the Requirements Payment matching obligation, so long as these funds were within the state's control and the funds were distinctly appropriated for HAVA specified activities.

Ohio's 5 percent state match requirement is $234,268. Ohio supports elections with state-generated funds in an amount far exceeding $234,268, therefore satisfying the state match requirement.

In addition, in state FY 2009, the Secretary of State received $3 million in state General Revenue Fund for distribution to county boards of elections for reimbursement of

postage and related expenses of mailing notices of elections and absentee ballot applications to voters preceding the November 2008 presidential election. This amount is substantially over and above the required state match.

[FR Doc. E9–12157 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 20, 2009.

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

Docket Numbers: ER08–1574–003.
Applicants: ORNI 18, LLC.
Description: Notice of Non-Material Change in Status of ORNI 18, LLC.
Filed Date: 05/18/2009.
Accession Number: 20090518–5061.
Comment Date: 5 p.m. Eastern Time on Monday, June 8, 2009.

Docket Numbers: ER09–1141–000.
Applicants: J.P. Morgan Commodities Canada Corporation.
Description: JP Morgan Commodities Canada Corp submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority and Request for Expedited Consideration, FERC Electric Tariff, Original Volume 1, effective 6/15/09.
Filed Date: 05/15/2009.
Accession Number: 20090518–0305.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1144–000.
Applicants: ISO New England Inc., New England Power Pool.
Description: ISO New England Inc et al submits further revisions to the Forward Capacity Market rules.
Filed Date: 05/15/2009.
Accession Number: 20090518–0313.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1149–000.
Applicants: Ameren Services Company.
Description: Union Electric Company submits Original Service Agreement 2027 to FERC Electric Tariff, Third Revised Volume 1.
Filed Date: 05/15/2009.
Accession Number: 20090518–0311.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1150–000.
Applicants: Entergy Services, Inc.
Description: Entergy Arkansas, Inc et al submits an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement and the Missouri Joint Municipal Electric Utility Commission etc.
Filed Date: 05/15/2009.
Accession Number: 20090518–0309.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1151–000.
Applicants: Trans-Allegheny Interstate Line Company.
Description: Trans-Allegheny Interstate Line Company submits Second Revised Sheet 314l.03 et al to its FERC Electric Tariff, Sixth Revised Volume 1.
Filed Date: 05/15/2009.
Accession Number: 20090518–0312.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1152–000.
Applicants: Southwest Power Pool Inc.
Description: Southwest Power Pool, Inc submits an unexecuted Large Generator Interconnection Agreement with Sunflower Electric Power Corp *et al.*
Filed Date: 05/15/2009.
Accession Number: 20090518–0304.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1153–000.
Applicants: ISO New England Inc.
Description: ISO New England, Inc submits its Capital Projects Report and schedule of the unamortized costs of the ISO's funded capital expenditures for quarter ending 3/31/09, to be effective 4/1/09.
Filed Date: 05/15/2009.
Accession Number: 20090518–0308.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1154–000.
Applicants: UNS Electric, Inc.
Description: UNS Electric, Inc submits Second Revised Sheet 90A et al. to FERC Electric Tariff, First Revised Volume 1 to Attachment C of its Open Access Transmission Tariff.
Filed Date: 05/15/2009.
Accession Number: 20090518–0307.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1155–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp submits a fully executed Letter Agreement dated 41/6/09 with FPL Elk City Wind, LLC.
Filed Date: 05/15/2009.
Accession Number: 20090518–0306.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1161–000.
Applicants: Ashtabula Wind, LLC.
Description: Ashtabula Wind, LLC submits the Amended and Restated Common Facilities Agreement by and between Otter Tail Corporation as Licensee and Ashtabula Wind as owner, designated Rate Schedule FERC 1.
Filed Date: 05/15/2009.
Accession Number: 20090518–0310.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–1162–000.
Applicants: Commonwealth Edison Company.
Description: Commonwealth Edison's Section 205 filing.
Filed Date: 05/15/2009.
Accession Number: 20090518–0315.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH09–18–000.
Applicants: Buckeye Power, Inc., Buckeye Power Generating, LLC.
Description: FERC–65A Exemption Notification of Buckeye Power, Inc.
Filed Date: 05/15/2009.
Accession Number: 20090515–5142.
Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

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

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

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

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

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12352 Filed 5–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 18, 2009.

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

Docket Numbers: EG09–42–000.

Applicants: Astoria Energy II LLC.

Description: Notice of EWG Self-Certification of Astoria Energy II LLC.

Filed Date: 05/15/2009.

Accession Number: 20090515–5079.

Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

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

Docket Numbers: ER96–719–025; ER97–2801–026; ER99–2156–018.

Applicants: MidAmerican Energy Company; PacifiCorp; Cordova Energy Company LLC.

Description: MidAmerican Energy Company et al. submits revisions to their respective market based rate tariffs.

Filed Date: 05/15/2009.

Accession Number: 20090518–0124.

Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER03–762–012; ER03–533–004.

Applicants: Alliant Energy Corporate Services, Inc.; Alliant Energy Neenah, LLC.

Description: Updated Market Power Analysis of Alliant Energy Corporate Services, Inc and Alliant Energy Neenah, LLC.

Filed Date: 05/14/2009.

Accession Number: 20090518–0066.

Comment Date: 5 p.m. Eastern Time on Thursday, June 4, 2009.

Docket Numbers: ER07–46–004; ER08–332–003; OA07–7-003; OA08–72–003.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits Substitute First Revised Sheet 73A et al. to FERC Electric Tariff, Seventh Revised Volume 5.

Filed Date: 05/11/2009.

Accession Number: 20090512–0047.

Comment Date: 5 p.m. Eastern Time on Monday, June 1, 2009.

Docket Numbers: ER09–409–002.

Applicants: WestConnect.

Description: Public Service Company of Colorado submits First Revised Volume No 7 to the WestConnect point to point regional transmission service experiment tariff of PSCo *et al.*

Filed Date: 05/15/2009.

Accession Number: 20090518–0103.

Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–626–002.

Applicants: Participating Transmission Owners Administrative Committee.

Description: PTO Administrative Committee submits revised compliance filing to incorporate by reference into their sections of the ISO Tariff of the Wholesale Electric Quadrant Standard 012, etc.

Filed Date: 05/15/2009.

Accession Number: 20090518–0104.

Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–666–002; ER09–667–002; ER09–668–002; ER09–669–002; ER09–670–002; ER09–671–002.

Applicants: EDFD–Handsome Lake; EDFD–Perryman; EDFD–Keystone; EDFD–Conemaugh; EDFD–C.P. Crane; EDFD–West Valley.

Description: EDFD Subsidiaries submits compliance filing in accordance with the Commission's 3/16/09 letter order.

Filed Date: 05/15/2009.

Accession Number: 20090518–0101.

Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–757–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

Filed Date: 05/15/2009.

Accession Number: 20090518–0102.

Comment Date: 5 p.m. Eastern Time on Friday, June 5, 2009.

Docket Numbers: ER09–760–001.

Applicants: Red Shield Acquisition, LLC.

Description: Red Shield Acquisition, LLC resubmits the integrated Agreement with the designation information required by Order No. 614.

Filed Date: 05/14/2009.

Accession Number: 20090515–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, June 4, 2009.

Docket Numbers: ER09–838–000.

Applicants: Entegra Power Services LLC.

Description: Entegra Power Services LLC responds to FERC's 4/22/09 letter providing Gila River's updated market power analysis for reviewing the application for market-based rates filed on 3/13/09.

Filed Date: 05/13/2009.

Accession Number: 20090515–0119.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 3, 2009.

Docket Numbers: ER09–1118–000.

Applicants: Sesco Caliso, LLC.

Description: SESCO CALISO, LLC submits an Application for Market-based Rate Authority.

Filed Date: 05/14/2009.

Accession Number: 20090515–0120.

Comment Date: 5 p.m. Eastern Time on Thursday, June 4, 2009.

Docket Numbers: ER09–1120–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation amendments to update the FERC Form 1 reference in its formula rates for the W–1A Tariff for full requirements service etc.

Filed Date: 05/11/2009.

Accession Number: 20090512–0048.

Comment Date: 5 p.m. Eastern Time on Monday, June 1, 2009.

Docket Numbers: ER09–1124–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits its Request to Terminate the Market Participant Agreement with Midwest Virtual Power Specialists and Notice Regarding Continuing & Anticipated Default.

Filed Date: 05/04/2009.

Accession Number: 20090513–0246.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 26, 2009.

Docket Numbers: ER09–1127–000.

Applicants: Wheelabrator South Broward Inc.

Description: Petition of Wheelabrator South Broward Inc for Order accepting market-based rate tariff for filing etc.

Filed Date: 05/14/2009.

Accession Number: 20090515–0105.

Comment Date: 5 p.m. Eastern Time on Thursday, June 4, 2009.

Docket Numbers: ER09–1131–000.

Applicants: Palmco Power CT, LLC.
Description: Palmco Power CT, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 05/14/2009.
Accession Number: 20090515–0109.
Comment Date: 5 p.m. Eastern Time on Thursday, June 4, 2009.

Docket Numbers: ER09–1132–000.
Applicants: Palmco Power NJ, LLC.
Description: Palmco Power NJ, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 05/14/2009.
Accession Number: 20090515–0108.
Comment Date: 5 p.m. Eastern Time on Thursday, June 4, 2009.

Docket Numbers: ER09–1133–000.
Applicants: Palmco Power PA, LLC.
Description: Palmco Power PA, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 05/14/2009.
Accession Number: 20090515–0107.
Comment Date: 5 p.m. Eastern Time on Thursday, June 4, 2009.

Docket Numbers: ER09–1137–000.
Applicants: Trans-Allegheny Interstate Line Company.
Description: Trans-Allegheny Interstate Line Co submits Second Revised Sheet No 314I.12 to FERC Electric Tariff, Sixth Revised Volume No. 1.
Filed Date: 05/13/2009.
Accession Number: 20090515–0111.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 3, 2009.

Docket Numbers: ER09–1138–000.
Applicants: PJM Interconnection LLC.
Description: PJM Interconnection LLC submits an executed interconnection service agreement.
Filed Date: 05/13/2009.
Accession Number: 20090515–0110.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 3, 2009.

Docket Numbers: ER09–1142–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits its compliance filing, revisions to their Market Administration and Control Area Services and Open Access transmission Tariff, in compliance with Order 719.
Filed Date: 05/15/2009.
Accession Number: 20090518–0033.
Comment Date: 5 p.m. Eastern Time on Friday, June 12, 2009.

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

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

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

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12353 Filed 5–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–011, Docket No. ER06–250–000, Docket No. ER05–294–000]

Electric Quarterly Reports: Knedergy, LLC, Westbank Energy Capital, LLC; Order on Intent To Revoke Market-Based Rate Authority Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller

Issued May 21, 2009.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2006), and 18 CFR part 35 (2008), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[1]

2. Commission staff's review of the Electric Quarterly Report submittals indicates that two utilities with authority to sell electric power at market-based rates have failed to file their Electric Quarterly Reports. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[2]

4. The Commission further stated that,

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002) *order directing filings,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[2] Order No. 2001 at P 222.

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[3]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.[4]

6. As noted above, Commission staff's review of the Electric Quarterly Report submittals identified two public utilities with authority to sell power at market-based rates that failed to file Electric Quarterly Reports through the first quarter of 2009. Commission staff contacted these entities to remind them of their regulatory obligations.[5] None of the public utilities listed in the caption of this order has met those obligations.[6] Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Report in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel their market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–12349 Filed 5–27–09; 8:45 am]

BILLING CODE 6717–01–P

[3] *Id.* P 223.

[4] *See, e.g., Electric Quarterly Reports,* 73 FR 31,460 (June 2, 2008); *Electric Quarterly Reports,* 115 FERC ¶ 61,073 (2006), *Electric Quarterly Reports,* 114 FERC ¶ 61,171 (2006).

[5] *See Knedergy, LLC,* Docket No. ER06–250–000 (March 27, 2009) (unpublished letter order); *Westbank Energy Capital, LLC,* Docket No. ER05–294–000 (March 27, 2009) (unpublished letter order).

[6] According to the Commission's records, the companies subject to this order last filed their Electric Quarterly Reports for the 3rd quarter of 2008.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8910–2]

Science Advisory Board Staff Office; Notification of Two Public Teleconferences of the Science Advisory Board Radiation Advisory Committee Augmented for the Review of EPA's Radiogenic Cancer Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Radiation Advisory Committee (RAC) to discuss its draft review report of EPA's draft document entitled ''*EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population*,'' December 2008.

DATES: The teleconference dates are Thursday, June 18, 2009 from 1 p.m. to 4 p.m. (Eastern Daylight Time) and Wednesday, July 22, 2009, from 1 p.m. to 4 p.m. (Eastern Daylight Time).

ADDRESSES: The teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code for the public teleconference may contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), by mail at the EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9984; by fax at (202) 233–0643; or by e-mail at: *kooyoomjian.jack@epa.gov*. General information concerning the SAB can be found on the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *Background:* Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), the SAB Staff Office hereby gives notice of two public teleconference meetings of the SAB Radiation Advisory Committee (RAC), to discuss its draft report regarding its review of EPA's radiogenic cancer risk assessment. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Office of Air and Radiation and Indoor Air (ORIA), has requested that the SAB Radiation Advisory Committee (RAC) provide advice to EPA on its most recent radiogenic cancer risk assessment, a draft document entitled *EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population, December, 2008*. A public conference call was held on Friday, February 27, 2009 and a public face-to-face review meeting was held on March 23 to 25, 2009 in the Washington, DC metropolitan area.

Availability of Meeting Materials: The meeting agendas and the SAB public draft report which will be the subject of the discussions will be posted on the SAB Web site prior to the teleconferences.

The EPA draft document, ''*EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population*,'' December 2008 is available at *http://epa.gov/radiation/assessment/pubs.html*.

Technical Contact: For questions and information concerning the EPA's draft document being reviewed, please contact Dr. Mary E. Clark of the U.S. EPA, ORIA by telephone at (202) 343–9348, fax at (202) 243–2395, or e-mail at *clark.marye@epa.gov*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB's RAC to consider during the review process. *Oral Statements*: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per

speaker with no more than a total of fifteen minutes for all speakers. Interested parties who wish to be placed on the public speaker list should contact the DFO, contact information provided above, in writing via e-mail seven days prior to the teleconference meeting date. For the Thursday, June 18, 2009 teleconference meeting, the deadline is Thursday, June 11, 2009. For the Wednesday, July 22, 2009 teleconference meeting, the deadline is Wednesday, July 15, 2009. *Written Statements*: Written statements should be received in the SAB Staff Office seven days prior to the teleconference meeting, so that the information may be made available to the SAB's augmented RAC for their consideration. For the Thursday, June 18, 2009 teleconference meeting, the deadline is Thursday, June 11, 2009; for the Wednesday, July 22, 2009 meeting the deadline is Wednesday, July 15, 2009. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail to *kooyoomjian.jack@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Meeting Accommodations: For information on access or services for individuals with disabilities, please contact the DFO, contact information provided above. To request accommodation of a disability, please contact the DFO, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 9, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–12480 Filed 5–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8910–1]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee to review and approve the draft report of the CASAC Carbon Monoxide Review Panel regarding the review of EPA's *Integrated Science Assessment for Carbon Monoxide: First External Review Draft* (March 2009).

DATES: The public teleconference will be held on Wednesday, June 17, 2009 from 9 a.m. to 11 a.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the CASAC public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9867 or e-mail at *stallworth.holly@epa.gov*. General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac*.

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App 2. The CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the National Ambient Air Quality Standards (NAAQS) for the six ''criteria'' air pollutants, including carbon monoxide (CO). The CASAC CO Review Panel reviewed EPA's *Integrated Science Assessment for Carbon Monoxide* (First External Review Draft, March 2009) at a public meeting on May 12–13, 2009 in Chapel Hill, North Carolina (announced in 74 FR 15265–15266). The chartered CASAC will consider the draft report of the CASAC CO Review Panel for approval on the June 17, 2009 teleconference.

Technical Contacts: Any questions concerning EPA's *Integrated Science Assessment for Carbon Monoxide* should be directed to Dr. Tom Long at *long.tom@epa.gov* at (919) 541–1880.

Availability of Meeting Materials: A meeting agenda, the CASAC draft report and other materials for the meeting will be placed on the CASAC Web site at *http://www.epa.gov/casac*. The *Integrated Science Assessment for Carbon Monoxide: First External Review Draft (March 2009)* is available at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=203935*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the June 17, 2009 meeting, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than June 12, 2009. Individuals making oral statements will be limited to three minutes per speaker. *Written Statements:* Written statements for the June 17, 2009 meeting should be received in the SAB Staff Office by June 12, 2009, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: May 19, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–12477 Filed 5–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8910–3, Docket EPA–HQ–OW–2005–0007]

Notice Regarding National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) for Storm Water Discharges Associated With Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA previously announced the issuance in EPA Regions 1, 2, 3, 5, 6, 9, and 10 of the NPDES general permit for stormwater discharges from industrial activity, also referred to as the 2008 Multi-Sector General Permit (MSGP), in the **Federal Register** of September 29, 2008 (73 FR 56572). The permit was signed on September 29, 2008 and became effective on September 29, 2008. On February 26, 2009 (74 FR 8789), EPA issued the MSGP to certain states, federal facilities, and Indian Country located in EPA Region 10 after receipt of certifications pursuant to section 401 of the Clean Water Act (CWA). Today's notice of availability provides notice of EPA's deletion of a portion of a specific State's CWA Section 401 certification condition from Part 9.1.2.5 of the 2008 MSGP for the State of Massachusetts.

FOR FURTHER INFORMATION CONTACT: For further information on this final NPDES general permit, contact David Gray, EPA Region 1, Office of Ecosystem Protection, Industrial Permits Branch at tel.: 617–918–1577, or Greg Schaner, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–0721, or send questions via e-mail to EPA's stormwater permit mailbox: *SWpermit@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. General Information

Pursuant to CWA Section 401(a) and EPA's implementing regulations, EPA may not issue a NPDES permit (including the 2008 MSGP) until the appropriate State certifications have been granted or waived. 40 CFR 124.53(a). Through the certification process, States were given the opportunity, before the 2008 MSGP was issued, to add conditions to the permit they believe are necessary to ensure that the permit complies with the CWA and other appropriate requirements of State law, including State water quality standards.

The Massachusetts Department of Environmental Protection (MassDEP) issued its initial Section 401 certification for the 2008 MSGP on February 13, 2006; with subsequent modifications thereto dated June 8, 2006 and September 5, 2006. In a modified certification on March 27, 2009, MassDEP deleted tributlytin (included in certification condition #5) as a required benchmark monitoring parameter applicable to Sector Q (Water Transportation) and Sector R (Ship and Boat Building and Repair Yards). Pursuant to EPA's implementing regulations at 40 CFR 124.55(b), EPA may, at the request of a permittee, modify the 2008 MSGP based on a modified certification received after final agency action on the permit ''only to the extent necessary to delete any conditions based on a condition in a certification invalidated by a court of competent jurisdiction or by an appropriate State board or agency.'' 40 CFR 124.55(b). In accordance with this provision, EPA has removed the monitoring parameter from the appropriate certification condition for the 2008 MSGP.[1] EPA's letter notifying the requesting permittee that its request to delete a portion of the permit condition was granted, and a copy of the 2008 MSGP reflecting the deletion, can be found in the docket for the 2008 MSGP (Docket ID No. EPA–HQ–OW–2005–0007).[2]

B. How Can I Get Copies of These Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2005–0007. The official public docket is the collection of materials, including the administrative record, for the final permit, required by 40 CFR 124.18. It is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at *http://www.regulations.gov*. You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the ''Search'' box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section B.1.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 13, 2009.

Ira Leighton,

Acting Regional Administrator, EPA Region 1.

[FR Doc. E9–12472 Filed 5–27–09; 8:45 am]

BILLING CODE 6560–50–P

[1] In addition, the regulations at 40 CFR 124.55(b) also require that EPA receive a request from a permittee for the deleted certification conditions to be removed from the permit. EPA received such requests to remove deleted conditions from Hyannis Marina, Hyannis, MA, on March 17, 2009.

[2] In addition, the permit may be found at: *http://cfpub.epa.gov/npdes/stormwater/msgp.cfm.*

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8907–6]

State Allotment Percentages for the Drinking Water State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In this notice, EPA is announcing the revised Drinking Water State Revolving Fund (DWSRF) allotments that will be provided to the States, the District of Columbia, Puerto Rico, U.S. Territories, American Indian

Tribes, and Alaska Native Villages if the President's budget request for Fiscal Year 2010 is enacted. These allotments reflect the results from EPA's most recent Drinking Water Infrastructure Needs Survey and Assessment, which was released on March 26, 2009. The revised State allotment percentages will be the basis for distributing the DWSRF program appropriations to the States for the four years from Fiscal Years 2010 through 2013.

DATES: This notice is effective May 28, 2009.

FOR FURTHER INFORMATION CONTACT: For inquiries, contact Travis Creighton, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3858; fax number: (202) 564–3757; e–mail address: *Creighton.travis@epa.gov*. Copies of this document and information on the Drinking Water Infrastructure Needs Survey and Assessment and the DWSRF program can be found on EPA's Office of Ground Water and Drinking Water Web site at *http://www.epa.gov/safewater/*.

SUPPLEMENTARY INFORMATION: The 1996 Safe Drinking Water Act (SDWA) Amendments established a DWSRF program and Congress has appropriated $10.3 billion, in total, for the program since its inception through Fiscal Year (FY) 2009. Congress directed that allotments for FY 1998 and each subsequent year would be distributed among States based on the results of an assessment by EPA of the relative infrastructure investment needs of the drinking water systems within each state (SDWA section 1452(a)(1)(D)(ii)), which must be conducted every four years.

EPA's Drinking Water Infrastructure Needs Survey and Assessment

EPA's first assessment, which reflected 1995 survey data, was released in February 1997; the second assessment, which reflected 1999 survey data, was released in February 2001; and the 2003 assessment was released in 2005. The 2007 Drinking Water Infrastructure Needs Survey and Assessment (Needs Assessment) was released on March 26, 2009 (EPA 816–R–09–001).

The 2007 Needs Assessment was completed in cooperation with the States. The States participated in both the design of the survey and in the collection of data. The survey examined the needs of water systems and used these data to determine the aggregate infrastructure investment needs of drinking water systems within each individual State. The survey included: All of the nation's 584 largest systems, each serving over 100,000 people; a statistical sample of 2,266 systems, each serving 3,301–100,000 people; and a statistical sample of 600 small water systems, each serving fewer than 3,301 people.

The sample design for the survey and assessment produces a statistically–valid State–by–State bottom–line estimate of the total need, which reflects the capital costs for all drinking water infrastructure projects allowed for inclusion in the survey. The 2007 Needs Assessment also presents capital needs for each State by system size and by category of need (*i.e.*, treatment, distribution and transmission, storage, source, and ''other'').

In general, an infrastructure project was included in the Needs Assessment if project documentation demonstrated that meeting the need would address the public health objectives of SDWA. The total State need includes both projects that are currently needed and future projects that will be needed over the next 20 years. Projects to correct immediate public health threats (*e.g.*, replacing a deteriorated filter plant) are given the same weight in the assessment as less critical needs (*e.g.*, replacing a storage tank that is expected to reach the end of its useful life in five years). The Needs Assessment excluded capital projects that are ineligible for DWSRF program assistance, such as dams, reservoirs and projects needed solely for growth.

The 2007 Needs Assessment found that the total national need is $334.8 billion (Table 1). This estimate represents the needs of the approximately 52,000 community water systems and 21,400 not-for-profit non-community water systems that are eligible to receive DWSRF program assistance. These systems are found in all 50 States, the District of Columbia, Puerto Rico, on American Indian lands and in Alaska Native Villages, and the Virgin Island and Pacific Island territories.

TABLE 1—2007 DRINKING WATER INFRASTRUCTURE NEEDS SURVEY AND ASSESSMENT 20-YEAR NEEDS

Type of need	Need (billions)
States	$324.0
Territories	0.9
American Indian and Alaska Native Villages	2.9
Costs for Proposed and Recent Regulations	7.0
Total National Need	334.8

Note: Numbers may not total due to rounding.

The total national need also includes $7.0 billion in capital needs associated with recently promulgated and proposed regulations, as identified in EPA Economic Analyses accompanying the rules. Although these needs are included in the total national need, they were not apportioned to the States based on the unanimous recommendation of the State representatives who participated in the survey design. The States expressed concern that the methods available for allocating the costs of these more recent or proposed regulations would not yet be represented in the capital improvement plans of water systems at the time of the 2007 survey. The total State need, which is the figure that EPA will use to calculate the State allotments, includes only the needs of the 50 States, the District of Columbia, and Puerto Rico. The 2007 Needs Assessment estimates that the total State need is $324.0 billion.

Allocation Method

On October 31, 1996, EPA solicited public comment on six options for using the results of the first Drinking Water Infrastructure Needs Survey and Assessment to allocate DWSRF program funds to the States (61 FR 56231). On March 18, 1997, EPA announced its decision to allocate DWSRF program funds for FYs 1998 through 2001 appropriations based on each State's proportional share of the total eligible needs for the States as derived from the 1995 Needs Assessment (62 FR 12900). EPA used this same method when allocating DWSRF program funds for FYs 2002 through 2005, utilizing the results of the 1999 Needs Assessment, and for FYs 2006 through 2009, utilizing the results of the 2003 Needs Assessment. EPA has made the determination that it will continue to use this method for allocating DWSRF program funds for FYs 2010 through 2013 appropriations, utilizing the results of the 2007 Needs Assessment.

The funds available to the States will be the level of funds appropriated by

Congress, less the national set-asides, which includes an allocation for American Indian and Alaska Native Village water systems. Of the funds available to States, the SDWA includes specific allocations for the Pacific Islands, the Virgin Islands, and the District of Columbia. Each State will receive an allotment of DWSRF program funds based on its proportional share of the total State need ($324.0 billion), provided that each State receives a minimum allocation of one percent of the funds available to States, as required by the SDWA. The 2007 Needs Assessment found that 20 States, Puerto Rico, and the District of Columbia each had less than one percent of the total national need; for 2010 to 2013, each of these DWSRF grantees will be eligible for one percent of the annual DWSRF funds made available to States (or, in aggregate, 22 percent of the total DWSRF funds made available to States).

President's Request for Allotments for American Indian and Alaska Native Water Systems and for United States Territories

The President's budget request for FY 2010 includes an increase in the minimum funding to be made available to American Indian and Alaska Native water systems from 1.5% to 2.0% of the total funding appropriated for the DWSRF. The President also requested an increase in the minimum funding to be made available to United States Territories from 0.33% to 1.5% of the total available to the States, the District of Columbia and Puerto Rico.

Allocation of Funds

Table 2 contains each State's expected DWSRF program allotment based on an appropriation of $1,500,000,000 and national set-aside assumptions. The appropriation amount is based on the President's budget request of $1,500,000,000 for FY 2010. The national set-asides for Fiscal Year 2010 include funds for American Indian and Alaska Native Village water systems at the level of 2.0% percent of the total appropriation or $30,000,000 for FY 2010 under the President's budget request. An additional national set-aside for FY 2010 includes $2,000,000 for monitoring for unregulated contaminants. If funds are appropriated for the DWSRF program at the level of $1,500,000,000, the total funds available to the States, the District of Columbia, and Territories would equal $1,468,000,000. Because the percentages are based on allotting all available funds annually to the States regardless of the year in the four-year cycle, they can be used for general planning purposes for the entire four-year cycle. Once the appropriated amount and national set-asides are known, a State's allotment can be estimated by subtracting the national set-asides from the total funds available for allotment and then applying the appropriate percentage shown below. For succeeding years, EPA will annually notify each State of their allotment from a specific fiscal year's appropriation after the final budget has been passed.

TABLE 2—DWSRF STATE PERCENTAGES AND DOLLAR ALLOTMENTS BASED ON THE PRESIDENT'S BUDGET REQUEST FOR FY 2010 AND THE 2007 NEEDS ASSESSMENT

State	FY 2010 allotment ($)	2010 allotment (%)
Alabama	18,196,000	1.24
Alaska	14,680,000	1.00
Arizona	29,483,000	2.01
Arkansas	22,215,000	1.51
California	137,318,000	9.35
Colorado	26,038,000	1.77
Connecticut	14,680,000	1.00
Delaware	14,680,000	1.00
Florida	47,932,000	3.27
Georgia	34,688,000	2.36
Hawaii	14,680,000	1.00
Idaho	14,680,000	1.00
Illinois	55,411,000	3.77
Indiana	24,485,000	1.67
Iowa	25,060,000	1.71
Kansas	17,960,000	1.22
Kentucky	21,191,000	1.44
Louisiana	27,742,000	1.89
Maine	14,680,000	1.00
Maryland	22,777,000	1.55
Massachusetts	27,367,000	1.86
Michigan	44,591,000	3.04
Minnesota	24,635,000	1.68
Mississippi	15,278,000	1.04
Missouri	28,375,000	1.93
Montana	14,680,000	1.00
Nebraska	14,680,000	1.00
Nevada	14,680,000	1.00
New Hampshire	14,680,000	1.00
New Jersey	31,361,000	2.14
New Mexico	14,680,000	1.00
New York	96,724,000	6.59
North Carolina	38,497,000	2.62
North Dakota	14,680,000	1.00
Ohio	47,168,000	3.21
Oklahoma	18,239,000	1.24
Oregon	14,680,000	1.00
Pennsylvania	43,011,000	2.93

TABLE 2—DWSRF STATE PERCENTAGES AND DOLLAR ALLOTMENTS BASED ON THE PRESIDENT'S BUDGET REQUEST FOR FY 2010 AND THE 2007 NEEDS ASSESSMENT—Continued

State	FY 2010 allotment ($)	2010 allotment (%)
Puerto Rico	14,680,000	1.00
Rhode Island	14,680,000	1.00
South Carolina	14,680,000	1.00
South Dakota	14,680,000	1.00
Tennessee	16,315,000	1.11
Texas	93,293,000	6.36
Utah	14,680,000	1.00
Vermont	14,680,000	1.00
Virginia	24,885,000	1.70
Washington	37,477,000	2.55
West Virginia	14,680,000	1.00
Wisconsin	25,308,000	1.72
Wyoming	14,680,000	1.00
District of Columbia	14,680,000	1.00
U.S. Territories*	22,020,000	1.50
Total Funds Available to the States, the District of Columbia, Puerto Rico, and U.S. Territories	1,468,000,000	
American Indian & Alaska Native Water Systems	30,000,000	
Monitoring for Unregulated Contaminants	2,000,000	
Total SRF Appropriation	1,500,000,000	

* Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Dated: May 14, 2009.

Paul F. Simon,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. E9–12470 Filed 5–27–09; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: June 3, 2009, at 9:30 a.m. to 12 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Presentation of recently published ''U.S.-African Trade Profile'' by Department of Commerce; discussion and update on the 2008 committee recommendations to U.S. Congress followed by a preliminary discussion on this year's recommendations including a possible sub-Saharan Africa special initiative; and an update on the Bank's on-going business development initiatives.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 3, 2009, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Kamil Cook,

General Counsel (Acting).

[FR Doc. E9–12321 Filed 5–27–09; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 09–37]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Ms. Judy Green from the schools and libraries universal service support mechanism (or ''E–Rate Program'') for a period of ten years. The Bureau takes this action to protect the E–Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Ms. Judy Green receives the debarment letter or May 28, 2009, whichever date come first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debarred Ms. Judy Green from the schools and libraries universal service support mechanism for a period of ten years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, FCC 09–37, which was mailed to Ms. Judy Green and released on May 12, 2009. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

The debarment letter, which attached the suspension letter, follows: May 12, 2009.

Via Certified Mail—Return Receipt Requested and Via Facsimile (510) 452–8405.

Ms. Judy Green, c/o Eric G. Babcock, Esq., Law Offices of Erick Babcock, 1212 Broadway, Suite 726, Oakland, CA 94612.

Re: Notice of Debarment; File No. EB–08–IH–1139

Dear Ms. Green: Pursuant to section 54.8 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E–Rate program'') for a period of ten years.[1]

On September 4, 2008, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on September 17, 2008.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to mail fraud and income tax fraud, in violation of 18 U.S.C. 1341, in connection with your participation in the E–Rate program involving telecommunications upgrade projects in four Connecticut school districts.[6] You admitted to participating in a scheme to defraud the E–Rate program whereby you agreed, in your capacity as Vice President of Operations for Innovative Network Solutions (''INS''), to accept invoices submitted by fictitious companies for work allegedly performed in the Connecticut school districts.[7] As a result of your actions, INS made payments totaling $608,505 on those fictitious invoices that were ultimately submitted to the Universal Service Administrative Company as legitimately reimbursable services under the E–Rate program.[8] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.[9] For the foregoing reasons, you are hereby debarred for a period of ten years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[10] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.''[11]

Sincerely,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Calvin B. Kurimai, Esq., Assistant United States Attorney, Department of Justice (via e-mail)

Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail) September 4, 2008.

FCC 09–37.

Via Certified Mail—Return Receipt Requested and E–Mail.

Ms. Judy Green, c/o Erik G. Babcock, Esq., Law Offices of Erik Babcock, 1212 Broadway, Suite 726, Oakland, CA 94612.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–1139

Dear Ms. Green: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction of mail fraud, in violation of 18 U.S.C. 1341, and subscribing a false tax return, in violation of 26 U.S.C. 7206(1), in connection with your participation in the schools and libraries universal service support mechanism (''E–Rate program'').[12] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E–Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[13]

[1] *See* 47 CFR 0.111(a), 54.8.

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Joseph Mello, Notice of Suspension and Initiation of Debarment Proceedings, DA 08–2041 (Inv. & Hearings Div., Enf. Bur., rel. Sept. 4, 2008) (Attachment 1).

[3] 73 FR 53868 (Sept. 17, 2008).

[4] *See* Notice of Suspension, 73 FR at 53869–70.

[5] *See* 47 CFR 54.8(e)(3) and (4). That date occurred no later than October 17, 2008. *See supra* note 3.

[6] 73 FR at 53869.

[7] *Id.*

[8] *Id.*

[9] 47 CFR 54.8(c).

[10] *See* 47 CFR 54.8(g). *See also* Notice of Suspension, 73 FR at 53870.

[11] *See* 47 CFR 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 73 FR at 53869.

[12] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent conviction of one count of mail fraud and one count of subscribing a false tax Return. *United States* v. *Joseph E. Mello,* Criminal Docket No. 3:07–CR–00224 (RNC–1), Plea Agreement (D.Conn. filed and entered Oct. 9, 2007) (''*Mello Plea Agreement''*); *United States* v. *Joseph E. Mello,* 3:07–CR–00224 (RNC–1), Judgment (D.Conn. filed June 26, 2008 and entered June 30, 2008) (''*Mello Judgment''*). *See also United States* v. *Joseph E. Mello,* Criminal Docket No. 3:07–CR–00224 (RNC–1), Information (D. Conn. filed and entered Oct. 9, 2007) (''*Mello Information''*).

[13] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order''*) (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries*

Continued

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[14] You pled guilty to mail fraud and income tax fraud in connection with your participation in the E–Rate program involving telecommunications upgrade projects in four Connecticut school districts.[15] While employed as Vice President of Operations for Innovative Network Solutions (''INS''), a first-tier subcontractor of Southwestern Bell Communications (''SBC'') for performing E–Rate funded telecommunications upgrades, you and former SBC employees Richard E. Brown and Keith J. Madeiros participated in a scheme to defraud the E–Rate program.[16] In your position at INS, you agreed to accept invoices submitted by fictitious companies created by Mr. Madeiros and Mr. Brown for work allegedly performed in the Connecticut school districts.[17] INS made payments totaling $608,505 on those fictitious invoices and then passed the costs on to SBC as legitimately reimbursable services under the E–Rate program.[18]

Pursuant to section 54.8(a)(4) of the Commission's rules,[19] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[20] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[21]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[22] Such requests, however, will not ordinarily be granted.[23] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[24] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[25]

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E–Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[26] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[27] Absent extraordinary circumstances, the Bureau will debar you.[28] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[29] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[30]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support Mechanism for three years from the date of debarment.[31] The Bureau may, if necessary to protect the public interest, extend the debarment period.[32]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW.,

Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[14] *Second Report and Order,* 18 FCC Rcd at 9225, para. 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[15] *See* Mello Information at 2; Mello Plea Agreement at 1–2, 5; Mello Judgment at 1.

[16] Mello Information at 3. The Bureau has debarred Richard E. Brown and Keith Madeiros from the E–Rate Program. *See* Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, to Richard E. Brown, Notice of Debarment, 22 FCC Rcd 20569 (Inv. & Hearings Div., Enf. Bur. 2007); Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, to Keith J. Madeiros, Notice of Debarment, 23 FCC Rcd 7959 (Inv. & Hearings Div., Enf. Bur. 2008).

[17] Mello Information at 2–4. *See also* Department of Justice, Press Release (Oct. 9, 2007)(available at *http://www.usdoj.gov/usao/ct/Press2007/20071009.html*)(last accessed Feb. 5, 2008)(''DOJ October 9 Press Release'').

[18] Mello Information at 4.

[19] 47 CFR 54.8(a)(4). *See Second Report and Order,* 18 FCC Rcd at 9225–27, paras. 67–74.

[20] *Second Report and Order,* 18 FCC Rcd at 9225, para. 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[21] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[22] 47 CFR 54.8(e)(4).

[23] *Id.*

[24] 47 CFR 54.8(e)(5).

[25] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

[26] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism.'' 47 CFR 54.8(a)(1).

[27] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[28] *Second Report and Order,* 18 FCC Rcd at 9227, para. 74.

[29] *See id.,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[30] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[31] *Second Report and Order,* 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), 54.8(g).

[32] *Id.*

Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Vickie.Robinson@fcc.gov.*

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov.*

Sincerely yours,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Calvin B. Kurimai, Esq., Assistant United States Attorney.

Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail).

[FR Doc. E9–12420 Filed 5–27–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Friday, May 29, 2009, to consider the following matters:

SUMMARY AGENDA:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Establishment of the FDIC Advisory Committee on Community Banking.

Memorandum and resolution re: Final Rule that restates, without change, the Interim Rule that Amended the Temporary Liquidity Guarantee Program to Extend the Debt Guarantee Program and to Impose Surcharges on Assessments for Certain Debt Issued on or after April 1, 2009.

Memorandum and resolution re: Final Rule Providing for Modification of the Temporary Liquidity Guarantee Program to Guarantee Mandatory Convertible Debt.

DISCUSSION AGENDA:

Memorandum and resolution re: Final Rule for Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized.

Memorandum and resolution re: Interagency Notice of Proposed Rulemaking to Implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Memorandum and resolution re: Interagency Final Rule and Advanced Notice of Proposed Rulemaking on the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies, and Interagency Final Rule on Consumers' Right to Dispute Inaccurate Information Provided to Consumer Reporting Agencies.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: May 22, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12452 Filed 5–26–09; 11:15 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009–N–07]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is submitting the information collection entitled ''Advances to Housing Associates'' to the Office of Management and Budget (OMB) for review and approval of a three year extension of OMB control number 2590–0001, which is due to expire on June 30, 2009.

DATES: Interested persons may submit comments on or before June 29, 2009.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*.

For Further Information or Copies of the Information Collection Contact: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, by telephone at 202–408–2866 (not a toll-free number), by electronic mail at *jonathan.curtis@fhfa.gov,* or by regular mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006–4001. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1430b) authorizes the Federal Home Loan Banks (Banks) to make advances under certain circumstances to certified nonmember mortgagees. The FHFA refers to nonmember mortgagees as housing associates. In order to be certified as a housing associate, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. 12 CFR part 926 implements the statutory eligibility requirements and establishes uniform review criteria an applicant must meet in order to be certified as a housing associate by a Bank. More specifically, sections 926.3 and 926.4 (12 CFR 926.3–926.4) implement the statutory eligibility requirements and provide guidance to an applicant on how it may satisfy such requirements. Section 926.5 (12 CFR 926.5) authorizes the Banks to approve or deny all applications for certification as a housing associate,

subject to the statutory and regulatory requirements. Section 926.6 (12 CFR 926.6) permits an applicant to appeal a Bank decision to deny certification to the FHFA.

12 CFR part 950, specifically section 950.17 (12 CFR 950.17), establishes the terms and conditions under which a Bank may make advances to a certified housing associate. Section 950.17 also imposes a continuing obligation on a housing associate to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.

The information collection contained in sections 926.1 through 926.6 and section 950.17 (12 CFR 926.1–926.6 and 950.17) is necessary to enable the Banks to determine whether an applicant satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a housing associate eligible to receive Bank advances. The FHFA requires and uses the information collection to determine whether to uphold or overrule a Bank decision to deny housing associate certification to an applicant.

The OMB control number for the information collection, which expires on June 30, 2009, is 2590–0001. The likely respondents include applicants for housing associate certification and current housing associates.

B. Burden Estimate

The FHFA estimates the total annual average number of applicants at one, with one response per applicant. The estimate for the average hours per application is 15 hours. The estimate for the annual hour burden for applicants is 15 hours (1 applicant × 1 response per applicant × 15 hours).

The FHFA estimates the total annual average number of maintenance respondents, that is, certified housing associates, at 65, with 1 response per housing associate. The estimate for the average hours per maintenance response is one hour. The estimate for the annual hour burden for certified housing associates is 65 hours (65 certified housing associates × 1 response per associate × 1 hour).

The estimate for the total annual hour burden is 80 hours (65 housing associates × 1 response per associate × 1 hour + 1 applicant × 1 response per applicant × 15 hours).

C. Comment Request

In accordance with 5 CFR 1320.8(d), the FHFA published a request for public comments regarding this information collection in the **Federal Register** on December 29, 2008. See 73 FR 79484 (December 29, 2008). The 60-day comment period closed on February 27, 2009. The FHFA received no public comments.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on applicants and housing associates, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

Dated: May 21, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–12398 Filed 5–27–09; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009–N–05]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection known as ''Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances,'' which has been assigned control 2590–0008 by the Office of Management and Budget (OMB). The FHFA intends to submit the information collection to OMB for review and approval of a three year extension of the control number, which is due to expire on August 31, 2009.

DATES: Interested persons may submit comments on or before July 27, 2009.

Comments: Submit comments to the FHFA using any one of the following methods:

E-mail: regcomments@fhfa.gov. Please include Proposed Collection; Comment Request: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances (No. 2009–N–05) in the subject line of the message.

Mail/Hand Delivery: Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552, ATTENTION: Public Comments/ Proposed Collection; Comment Request: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances (No. 2009–N–05).

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: David L. Roderer, Senior Financial Analyst at 202–408–2540 (not a toll-free number), *david.l.roderer@fhfa.gov.* The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The FHFA has authorized the Federal Home Loan Banks (Banks) to acquire mortgage loans and other assets from their members or housing associates under certain circumstances. 12 CFR part 955. The regulation refers to these assets as acquired member assets or AMA. As part of this regulatory authorization, each Bank that acquires residential mortgage loans must provide to the FHFA certain loan-level data on a quarterly basis. The reporting requirements, which previously were in 12 CFR part 955 (specifically, section 955.4 and Appendices A and B), currently are contained in the FHFA Data Reporting Manual. The FHFA uses this data to monitor the safety and soundness of the Banks and the extent to which the Banks are fulfilling their statutory housing finance mission through their AMA programs. See 12 U.S.C. 1422a(a).

While the Banks provide the AMA data directly to the FHFA, each Bank initially must collect the information from the private-sector member or housing associate from which the Bank acquires the mortgage loan. Bank members and housing associates already collect the vast majority of the data the FHFA requires in order to do business with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) under regulatory requirements issued by the Department of Housing and Urban

Development (HUD) and pursuant to the information collection requirements under the Home Mortgage Disclosure Act (HMDA). Thus, the FHFA's information collection imposes only a minor incremental additional burden on Bank members and housing associates.

The OMB control number for the information collection, which expires on August 31, 2009, is 2590–0008. The likely respondents are institutions that sell AMA assets to Banks.

B. Burden Estimate

The FHFA estimates that the hour burden associated with the AMA collection is little changed. More institutions are participating in the AMA program, but the average report size has gone down dramatically. The FHFA estimates the total annual average number of respondents at 750, with 4 responses per respondent. The estimate for the average hours per response is 12 hours. The estimate for the total annual hour burden is 36,000 hours (750 respondents × 4 responses per respondent × 12 hours).

Bank members could incur additional one-time costs to be able to collect and report additional loan-level data elements. The FHFA estimates this additional, one-time cost at $150,000 ($2,000 × 750 members).

C. Comment Request

The FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Dated: May 21, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–12401 Filed 5–27–09; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Robb B. Kahl, Monona, Wisconsin; as trustee of the Glenn A. Solsrud Revocable Trust Concerning Caprice Corporation, to acquire voting shares of Caprice Corporation, Augusta, Wisconsin, and thereby indirectly acquire voting shares of Unity Bank North, Red Lake Falls, Minnesota.

2. Robb B. Kahl, Monona, Wisconsin; as trustee of the Glenn A. Solsrud Revocable Trust Concerning Augusta Financial Corporation, to acquire voting shares of Augusta Financial Corporation, and thereby indirectly acquire voting shares of Unity Bank, both of Augusta, Wisconsin.

Board of Governors of the Federal Reserve System, May 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12378 Filed 5–27–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010099–050.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk A/S; Atlantic Container Line AB; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compañía Chilena de Navegación Interoceánica S.A.; Compania SudAmericana de Vapores S.A.; COSCO Container Lines Co. Ltd; Crowley Maritime Corporation; Evergreen Marine Corporation (Taiwan), Ltd.; Hamburg-Süd KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; MISC Berhad; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Ltd.; Pacific International Lines (Pte) Ltd.; United Arab Shipping Company (S.A.G.); Wan Hai Lines Ltd.; Yang Ming Transport Marine Corp.; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth, Esq.; K & L Gates LLP; 1601 K Street NW.; Washington, DC 20006–1600.

Synopsis: The amendment clarifies the Agreement's purpose and authority without granting new substantive authority and designates that an executive committee may be established.

Agreement No.: 011584–007.

Title: NYK/WWL/NSCSA Cooperative Working Agreement.

Parties: Nippon Yusen Kaisha; Wallenius Wilhelmsen Logistics AS; and National Shipping Company of Saudi Arabia.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Hoegh Autoliners AS as a party to the Agreement, delete countries in the European Union from the geographic scope, update the address of NSCSA, and restate the agreement.

By Order of the Federal Maritime Commission.

Dated: May 22, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–12415 Filed 5–27–09; 8:45 am]

BILLING CODE;P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Atlantic Express Corporation, 7751 W. 88th Street, Bridgeview, IL 60455. *Officer:* Jolanta Latvys, President (Qualifying Individual).

Top Since Logistics, Inc., 600 W. Main Street, #211, Alhambra, CA 91801. *Officers:* Pair L. Williams,Vice President (Qualifying Individual), Wei Weiwen, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

The Maritime Company For Navigation U.S.A., Inc. dba The Maritime Company For Navigation, 330 Snyder Ave., Berkeley Heights, NJ 07922. *Officer:* Ahmed Singer, President (Qualifying Individual).

Grimes Supply Chain Services, Inc., 14500 Hyatt Rd., Jacksonville, FL 32218. *Officer:* Kathryn Couch, Asst. Secretary (Qualifying Individual).

Simos Logistics Co., Inc., 732 S. Raven Rd., Shorewood, IL 60404. *Officers:* Laura M. Konieczny, Vice President (Qualifying Individual), Vicente A. Simos, President.

Cortez Customhouse Brokerage Company, 4950 West Dickman Rd., Battle Creek, MI 49037. *Officer:* Dustin H. King, Vice President (Qualifying Individual).

Poseidon Shipping Lines Inc., 430 S. Garfield Ave., Suite 325, Alhambra, CA 91801. *Officers:* Eric Yuan H. Wang, Vice President (Qualifying Individual), Yu Li, President.

New Horizon Shipping, Inc., 29234 Kester Lane, Laguna Niguel, CA 92677. *Officer:* Gihan Zahran, CEO (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

TLR-Total Logistics Resource, Inc., dba Innovative Freighting, 5362 NE 112th Ave., Portland, OR 97220. *Officer:* Teresa M. Bartle, President (Qualifying Individual).

Venture Logistics Inc., 9280 Rutledge Ave., Boca Raton, FL 33434. *Officer:* Kevin Goddard, President (Qualifying Individual).

ATEC Logistics, LLC, 650 South Northlake Blvd., Altamonte Springs, FL 32701. *Officers:* Patrick Ferry, Managing Member (Qualifying Individual), Michael L. Clements, President.

Partenaire Co., 200 Park Avenue, Suite 104, Falls Church, VA 22046. *Officer:* Thierry Reiter, President (Qualifying Individual).

Total Global Solutions, Inc., 4290 Bells Ferry Rd., #224, Kennesaw, GA 30144. *Officers:* Kathleen G. Molnar, Secretary, Natasha S. Gardner, Treasurer (Qualifying Individuals), Dennis R. Smith, President.

Dated: May 22, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–12424 Filed 5–27–09; 8:45 am]

BILLING CODE 6310–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). This is the second of two notices required under the PRA in which the FTC is seeking public comments on its proposal to extend through May 31, 2012, the current PRA clearance for information collection requirements contained in its Telemarketing Sales Rule (''TSR'' or ''Rule''). That clearance expires on May 31, 2009.

DATES: Comments must be submitted on or before June 29, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Telemarketing Sales Rule: FTC File No. P994414'' to facilitate the organization of comments. Please note that comments 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*)—and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

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 by using the following weblink: (*https://secure.commentworks.com/ftc-TSRPRA*) (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://secure.commentworks.com/ftc-TSRPRA*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

A comment filed in paper form should include the ''Telemarketing Sales Rule: FTC File No. P994414''reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the

[1] 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).

Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), 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 delays due to heightened security precautions.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or requirements for the TSR should be addressed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–288, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 326–2970.

SUPPLEMENTARY INFORMATION: On March 20, 2009, the FTC sought comment on the information collection requirements associated with the TSR, 16 CFR Part 310 (Control Number: 3084–0097).[2] One comment was received (see *www.ftc.gov/os/comments/tsrpra60day/index.shtm)*. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501–3521, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for this Rule. All comments should be filed as prescribed in the **ADDRESSES,** section above, and must be received on or before June 29, 2009.

The TSR implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 (''Telemarketing Act''), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (''USA PATRIOT Act''), Pub. L. 107056 (Oct. 25, 2001). The Act seeks to prevent deceptive or abusive telemarketing practices in telemarketing, which, pursuant to the USA PATRIOT Act, includes calls made to solicit charitable contributions by third-party telemarketers. The Telemarketing Act mandated certain disclosures by telemarketers, and directed the Commission to consider including recordkeeping requirements in promulgating a rule to prohibit such practices. As required by the Telemarketing Act, the TSR mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

In 2003, the Commission amended the TSR to include certain new disclosure requirements and to expand the Rule in other ways. *See* 68 FR 4580 (Jan. 29, 2003). Specifically, the Rule was amended to cover upsells[3] (not only in outbound calls, but also in inbound calls) and additional transactions were included under the Rule's purview. For example, the Rule was extended to the solicitation by telephone of charitable donations by third-party telemarketers in response to the mandate of the USA PATRIOT Act. Finally, the amendments established the National Do Not Call Registry (''Registry''), permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls.[4] Accordingly, under the TSR, most sellers and telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.[5] Moreover, sellers and telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.[6]

In 2008, the Commission promulgated amendments to the TSR regarding prerecorded calls, 16 CFR 310.4(b)(1)(v), and call abandonment rate calculations, 16 CFR 310.4(b)(4)(i).[7] The amendment regarding prerecorded calls added certain information collection requirements.[8] Specifically, the amendment expressly authorized sellers and telemarketers to place outbound prerecorded telemarketing calls to consumers if: (1) the seller has obtained written agreements from those consumers to receive prerecorded telemarketing calls after a clear and conspicuous disclosure of the purpose of the agreement; and (2) the call discloses and provides an automated telephone keypress or voice-activated opt-out mechanism at the outset of the call.[9] Although the opt-out mechanism requirement took effect on December 1, 2008, the Commission deferred the compliance date for the written agreement requirement until September

[2] 74 FR 11952 (July 7, 2008).

[3] An ''upsell'' is the solicitation in a single telephone call of the purchase of goods or services after an initial transaction occurs. The solicitation may be made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer (''external upsell''). Or, it may be made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer (''internal upsell'').

[4] 68 FR 4580 (Jan. 29, 2003). The Registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls. This includes telemarketers who solicit consumers, often on behalf of third party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It does not limit calls by political organizations, charities, or telephone surveyors.

[5] 16 CFR § 310.4(b)(1)(iii)(B).

[6] 16 CFR § 310.4(b)(3)(iv). Effective January 1, 2005, the TSR was amended to require telemarketers to access the Registry at least once every 31 days. *See* 69 Fed. Reg. 16368 (Mar. 29, 2004).

[7] *See* 73 FR 51164 (Aug. 29, 2008).

[8] By contrast, the revised standard for measuring the call abandonment rate does not impose any new or affect any existing reporting, recordkeeping or third-party disclosure requirements within the meaning of the PRA. That amendment relaxes the prior requirement that the abandonment rate be calculated on a ''per day per campaign'' basis by permitting, but not requiring, its calculation over a 30-day period, as industry requested. Sellers and telemarketers already had established automated recordkeeping systems to document their compliance with the prior standard. The amendment likely reduces their overall compliance burden. The prior ''per day'' requirement effectively forced telemarketers to turn off their predictive dialers on the many occasions when spikes in call abandonment rates occur late in the day, thereby preventing realization of the cost savings that predictive dialers provide.

[9] The prerecorded call amendment provides the first ever explicit authorization in the TSR for sellers and telemarketers to place prerecorded telemarketing calls to consumers. The pre-amended call abandonment prohibition of the TSR implicitly barred such calls by requiring that all telemarketing calls be connected to a sales representative, rather than a recording, within two seconds of the completed greeting of the person who answers. The amendment applies not only to prerecorded calls that are answered by a consumer, but also to prerecorded messages left on consumers' answering machines or voicemail services.

1, 2009, one year from its promulgation, to afford time for an orderly phase-in.[10] Thus, affected entities may still be taking steps toward compliance. Accordingly, with implementation of the opt-out mechanism presumably now satisfied by affected entities, the relevant focus going forward in estimating PRA burden centers on: (1) the establishment of recordkeeping and disclosure systems for the express agreement requirement of the prerecorded call amendment; and (2) the remaining provisions of the TSR that impose recordkeeping and disclosure obligations.

Burden Statement:

Estimated Annual Hours Burden: 1,634,347 hours

The estimated burden for recordkeeping is 22,772 hours for all industry members affected by the Rule. The estimated burden for the disclosures that the Rule requires for both the live telemarketing call provisions of the TSR and the prerecorded call amendments is 1,611,575 hours for all affected industry members. Thus, the total PRA burden is 1,634,347 hours. These estimates are explained below.

Number of Respondents: As a preliminary matter, only telemarketers and sellers, not telefunders (third-party telemarketers soliciting contributions on behalf of charities), are subject to the Registry provisions of the Rule, and only sellers, not telemarketers or telefunders, are subject to the new express agreement obligations attributable to the prerecorded call amendments.[11] The Registry data does not separately account for telefunders; they are a subset of the overall number of telemarketing entities known to access the Registry for any given year. Thus, past FTC estimates that separately accounted for telefunders over-counted them.[12] The following estimates have been adjusted accordingly.

In calendar year 2008, 50,245 telemarketing entities accessed the Registry. Of these entities, 1,158 were ''exempt'' entities obtaining access to data.[13] By definition, none of the exempt entities are subject to the TSR. In addition, 38,815 sellers and 10,272 telemarketers accessed the Registry. Of those, however, 25,574 sellers and 7,178 telemarketing entities with independent access to the Registry obtained data for just one state. Staff assumes that these entities are operating solely intrastate, and thus would not be subject to the TSR.[14] Applying this Registry data, staff estimates that 14,335 telemarketing entities (50,245–1,158–34,752) are currently subject to the TSR, of which 11,241 (38,815–27,574) are sellers and 3,094 (10,272–7,178) are telemarketers.[15]

Absent information to the contrary, staff retains its prior estimate that 25 new-entrant telefunders per year would need to set up recordkeeping systems that comply with the TSR.

Recordkeeping Hours:

A. Live Telemarketing Call Provisions of the TSR

Staff estimates that the above-noted 14,335 telemarketing entities subject to the Rule each require approximately 1 hour per year to file and store records required by the TSR for an annual total of 14,335 burden hours. The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours. These figures, based on prior estimates, are consistent with staff's current knowledge of the industry. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities, including the effects of the prerecorded call amendment, is 21,835 hours.

B. Prerecorded Call Amendment

As noted above, after September 1, 2009, no prerecorded call may be placed by or on behalf of a seller unless the seller has obtained a written agreement from the person called to receive such calls. Thus, the recordkeeping obligations of the prerecorded call amendment fall on sellers rather than telemarketers.[16]

In view of its phase-in and the prerecorded call amendment's clarification allowing written agreements to be created and maintained electronically pursuant to the Electronic Signatures In Global and National Commerce Act (commonly, ''E–SIGN''), any initial burden caused by the transition from the previously required records of an established business relationship to the newly required records of a written agreement should not be material. Once the necessary systems and procedures are in place, any ongoing incremental burden to create and retain electronic records of agreements by new customers to receive prerecorded calls should be minimal.[17] Accordingly, staff estimates that existing sellers subject to the prerecorded call amendment will require approximately 1 hour to prepare and maintain records required by the amendment, and an estimated 75 new entrant-telemarketers (including telefunders) per year would require the same. This reflects a one-time modification of existing customer databases to include an additional field to record consumer agreements.

Most of the 11,241 existing sellers, however, in anticipation of the September 1, 2009 compliance deadline, presumably will have set up already the necessary systems and procedures by or before the May 31, 2009 expiration of the PRA clearance for the TSR. At that point, sellers will have had 9 months' advance notice, with just 3 months remaining between the expiring clearance and the compliance deadline. Allowing for this apportionment, 2,810 remaining existing sellers (*i.e.*, 3/12 of the 11,241 existing sellers) would still be setting up compliant systems between May 31,2009 and the September 1, 2009 compliance deadline, with no further set-up burden thereafter.[18] Thus, annualized for an ''average'' year over the prospective 3-

[10] *See* 73 FR 51164, 51166.

[11] Telemarketers and telefunders must comply, however, with the abandoned call provisions of the TSR, and the opt out provisions of the 2008 amendments.

[12] For the sake of simplicity and to err conservatively, FTC staff's burden estimates for provisions less likely to be applicable to telefunders (*e.g.*, prize promotion disclosure obligations for outbound live calls, under 16 CFR 310.4(d)), will not be reduced by a separate estimate for the subset of telemarketers that are telefunders. Conversely, estimates of the number of new-entrant telemarketers will incorporate new-entrant telefunders.

[13] An exempt entity is one that, although not subject to the TSR, chooses to voluntarily scrub its calling lists against the data in the Registry.

[14] These entities would nonetheless likely be subject to the Federal Communications Commission's (''FCC'') Telephone Consumer Protection Act regulations, including the requirement that entities engaged in intrastate telephone solicitations access the Registry.

[15] Staff assumes, for purposes of these calculations, that those telemarketers that make prerecorded calls download telephone numbers listed on the Registry, rather than conduct online searches, as the latter may consume considerably more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

[16] Although telemarketers that place prerecorded telemarketing calls on behalf of sellers must capture and transmit to the seller any requests they receive to place a consumer's telephone number on the seller's entity-specific do-not-call list, this *de minimis* obligation extends both to live and prerecorded telemarketing calls, and is subsumed within the PRA estimates shown above.

[17] If it is not feasible to obtain a written agreement at the point of sale after the written agreement requirement takes effect, sellers could, for example, obtain a customer's email address and request an agreement via email to receive prerecorded calls.

[18] Staff has already attributed 100 hours for each new-entrant seller to develop a recordkeeping system compliant with the TSR, which would also factor in the time to create and retain electronic records of agreements by customers to receive prerecorded calls.

year PRA clearance (May 31, 2009–May 31, 2012), this amounts to 937 hours per year.

Disclosure Hours:

A. Live Telemarketing Call Provisions of the TSR

Staff believes that in the ordinary course of business a substantial majority of sellers and telemarketers make the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute ''burden.'' 16 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought 3-year OMB clearance for this Rule, staff estimates that most of the disclosures the Rule requires would be made in at least 75 percent of telemarketing calls even absent the Rule.[19]

Based on previous assumptions, staff estimates that of the 14,335 telemarketing entities noted above, 7,342 conduct inbound telemarketing.[20] Inbound calls from consumers in response to direct mail solicitations that make certain required disclosures are exempt from the TSR.[21] Although inbound calls are generally exempt from the Rule, the Commission believes it is likely that industry members who choose to make the requisite disclosures in direct mail solicitation may do so in an effort to qualify for the exemption as well. Thus, Commission staff believes it is appropriate to include in the relevant burden hour calculation both the burden for compliance with the Rule's oral disclosures and the burden incurred by entities that make written disclosures in order to qualify for the inbound direct mail exemption. Accordingly, staff estimates that, of the 7,342 entities that conduct inbound telemarketing, approximately one-third (2,447) will choose to incorporate disclosures in their direct mail solicitations that exempt them from complying with the Rule.

Staff necessarily has made additional assumptions in estimating burden. From the total volume of outbound and inbound calls, staff first calculated disclosure burden for initial transactions that resulted in sales, derived from external data and/or estimates drawn from a range of calendar years (2001–2008). Staff recognizes that disclosure burdens may still be incurred regardless of whether or not a call results in a sale. Conversely, a substantial percentage of outbound calls result in consumers hanging up before the seller or telemarketer makes the required disclosure(s). However, because the requirements in § 310.3(a)(1) for certain disclosures before a consumer pays for a telemarketing purchase apply only to sales, early call cessation (*i.e.*, consumers hanging up pre-disclosure or before full disclosure) is excluded from staff's burden estimates for § 310.3(a)(1).

For transactions in which a sale is not a precursor to a required disclosure, *i.e.*, the upfront disclosures required in all outbound telemarketing calls and outbound or inbound ''upsell'' calls by § 310.4(d), staff has calculated burden for initial transactions based on estimates of the total volumes of outbound and inbound calls, discounted for anticipated early hang-ups. For transactions in which a sale is a precursor to required disclosure, *i.e.*, § 310.3(a)(1), the calculation is based on the volume of direct sales.

Based on the most recently available applicable industry data and further FTC extrapolations, staff estimates that 2.9 billion outbound calls are subject to FTC jurisdiction and attributable to direct orders, that 570 million of these calls result in direct sales,[22] and that there are 2.8 billion inbound sales from inbound calls subject to FTC jurisdiction. Staff retains its longstanding estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds[23] for telemarketers to disclose the required outbound call information orally plus 3 additional seconds[24] to disclose the information required in the case of an upsell. Staff also retains its longstanding estimates that at least 60 percent of sales calls result in ''hang-ups'' before the telemarketer can make all the required disclosures and that ''hang-up'' calls consume only 2 seconds.[25]

Staff bases all ensuing upsell calculations on the volume of additional sales after an initial sale, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial offer—whether through an outbound or an inbound call. Using industry information, staff assumes an upsell conversion rate of 40% for inbound calls as well as outbound calls.[26] Moreover, staff assumes that consumers who agree to an upsell will not terminate an upsell before the seller or telemarketer makes the full required disclosures.

Based on the above inputs and assumptions, staff estimates that the total time associated with these disclosure requirements is 1,086,389 hours per year [(2.9 billion outbound calls x 40% lasting the duration x 7 seconds of full disclosures = 2,255,556) + (2.9 billion outbound calls x 60% terminated after 2 seconds of disclosures = 966,667) + (570 million outbound calls resulting in direct sales x 40% upsell conversions x 3 seconds of related disclosures = 190,000) + (2.8 billion inbound calls x 40% upsell conversions x 3 seconds = 933,333) x an estimated 25% of affected entities not already making such disclosures independent of the TSR[27] = 1,086,389 hours].

The TSR also requires further disclosures in telemarketing sales calls before the customer pays for goods or services. These disclosures include the total costs of the offered goods or services; all material restrictions; and all material terms and conditions of the

[19] Accordingly, staff has continued to estimate that the hours burden for most of the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires.

[20] While staff does not have information directly stating the number of inbound telemarketers, it notes that, according to the DMA 21% of all direct marketing in 2007 was by inbound telemarketing and 20% was by outbound telemarketing. *See DMA Statistical Fact Book* (30th ed. 2008) at p. 17. Accordingly, based on such relative weighting, staff estimates that the number of inbound telemarketers is approximately 7,342 (14,335 x 21 ÷ (20 + 21)).

[21] Some exceptions to this broad exemption exist, including solicitations regarding prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, advertisements involving goods or services described in § 310.3(a)(1)(vi), advertisements involving goods or services described in § 310.4(a)(2)–(4); and any instances of upselling included in such telephone calls.

[22] For staff's PRA burden calculations, only direct orders by telephone are relevant. That is, sales generated through leads or customer traffic are excluded from these calculations because such sales are not subject to the TSR's recordkeeping and disclosure provisions. The direct sales total of 570 million is based on an estimated 1.9 billion sales transactions from outbound calls being subject to FTC jurisdiction reduced by an estimated 30 percent attributable to direct orders. This percentage estimate is drawn from DMA published data last appearing in the DMA Statistical Fact Book (2001), at p. 301.

[23] *See, e.g.*, 60 FR 32682, 32683 (June 23, 1995); 63 FR 40713, 40714 (July 30, 1998); 66 FR 33701, 33702 (June 25, 2001); 71 FR 28698, 28700 (May 17, 2006).

[24] 71 FR 3302, 3304 (Jan. 20, 2006); 71 FR 28698, 28700.

[25] *See, e.g.*, 60 FR at 32683.

[26] This assumption originated with industry response to the Commission's 2003 Final Amended TSR. *See* 68 FR 4580, 4597 n.183 (Jan. 29, 2003). Although it was posited specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, barring the receipt of any information to the contrary.

[27] *See supra* note 19 and accompanying text.

seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer). Additional specific disclosures are required if the call involves a prize promotion, the sale of credit card loss protection products or an offer with a negative option feature.

Staff estimates that the general sales disclosures require 472,562 hours annually. This figure includes the burden for written disclosures [(2,447 inbound telemarketing entities estimated to use direct mail[28] x 10 hours[29] per year x 25% burden) = 6,118 hours], as well as the figure for oral disclosures [(570 million calls x 8 seconds x 25% burden = 316,667 hours) + (570 million outbound calls x 40% (upsell conversion) x 20% sales conversion x 25% burden x 8 seconds = 25,333 hours) + (2.8 billion inbound calls x 40% upsell conversion x 20% sales conversion x 25% burden x 8 seconds) = 124,444 hours].[30]

Staff also estimates that the specific sales disclosures require 48,160 hours annually [(570 million calls x 5% [estimate for outbound calls involving prize promotions[31]] x 3 seconds x 25% burden = 5,938 hours) + (570 million calls x .1% [estimate for outbound calls involving credit card loss protection (''CCLP'')] x 4 seconds x 25% burden = 158 hours) + (570 million calls x 40% upsell conversions x 20% sales conversions x .1% [estimate for outbound calls involving CCLP upsells[32]] x 4 seconds x 25% burden = 13 hours) + (2.8 billion inbound calls x 40% upsell conversion x 20% sales conversion x .1% [estimate for inbound calls involving CCLP upsells] x 4 seconds x 25% burden = 62 hours) + (570 million outbound calls x 10% [estimate for outbound calls involving negative options] x 4 seconds x 25% burden = 15,833 hours) + (570 outbound million calls x 40% upsell conversion x 20% sales conversions x 10% [estimate for outbound calls involving negative option upsells] x 4 seconds x 25% burden = 1,267 hours) + (2.8 billion inbound calls x 40% upsell conversions x 20% sales conversions x 10% [estimate for inbound calls involving negative option upsells] x 4 seconds[33] x 25% burden) = 6,222 hours] + (2.8 billion inbound calls x .3% [estimate for inbound calls involving business opportunities[34]] x 8 seconds = 18,667 hours).

The total annual burden for all of the sales disclosures is 520,722 hours (472,562 general + 48,160 specific sales disclosures) or, by rough approximation (allowing that some entities conducting inbound telemarketing will be exempt from oral disclosure if making certain written disclosures), 36 hours annually per firm (520,722 hours ÷ 14,335).

Finally, any entity that accesses the Registry, regardless whether it is paying for access, must submit minimal identifying information to the operator of the Registry. This basic information includes the name, address, and telephone number of the entity; a contact person for the organization; and information about the manner of payment. The entity also must submit a list of the area codes for which it requests information and certify that it is accessing the Registry solely to comply with the provisions of the TSR. If the entity is accessing the Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes for which it requests information on their behalf, and a certification that the clients are accessing the Registry solely to comply with the TSR.

As it has since the Commission's initial proposal to implement user fees under the TSR, FTC staff estimates that affected entities will require no more than two minutes for each entity to submit this basic information, and anticipates that each entity will have to submit the information annually.[35] Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 478 burden hours (14,335 entities x 2 minutes per entity). In addition, FTC staff continues to estimate that up to one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. Thus, this would result in an additional 239 burden hours. Accordingly, accessing the Registry will impose a total reporting burden of approximately 717 hours per year.

Cumulative of the above components, disclosure (1,086,389 + 472,562 + 48,160 = 1,607,111 hours) and reporting burden (717 hours) for the live telemarketing call provisions of the TSR is 1,607,828 hours.

B. Prerecorded Call Amendment

Staff estimates that the 2,810 sellers[36] will require, on average, 4 hours each—11,240 hours—to implement the incremental disclosure requirements mandated by the 2008 TSR amendments. Those amendments require the following tasks: (1) one-time creation, recording, and implementation of a brief telephone script requesting a consumer's agreement via a telephone keypad response;[37] (2) one-time modification of or newly created electronic forms to obtain agreements to receive prerecorded calls for use in emails to consumers or on a website[38] (3) one-time revision of any existing paper forms (*e.g.*, credit card or loyalty club forms, or printed consumer contracts) to include a request for the consumer's agreement to receive

[28] *See* the discussion in the text immediately following note 21.

[29] FTC staff believes a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule; this, too, has been stated in prior FTC notices inviting comment on PRA estimates. No comments were received, and staff continues to believe this estimate remains reasonable.

[30] The percentage and unit of time measurements are FTC staff's estimates.

[31] Since the purpose of prize promotions is to induce an initial sale, staff believes such promotions are unlikely to occur in upsells. Accordingly, the ensuing estimates do not provide for prize promotion upsells.

[32] It is staff's understanding and belief that CCLP sales rarely, if ever, prompt inbound calls, but instead may occur as upsells after an inbound call for another transaction.

[33] This includes the added required disclosure, particular to CCLP, of the limits on a cardholder's liability for unauthorized use of a credit card. *See* 16 CFR 310.3(a)(1)(vi).

[34] The estimate for § 310.3(a)(1) disclosures in outbound calls involving business opportunities is subsumed in the overall figure for outbound telemarketing call disclosures. Staff does not believe that business opportunities would likely be offered as upsells; at most, their incidence would be very infrequent and, accordingly, the associated disclosure burden *de minimis*.

[35] *See* 67 FR 37366 (May 29, 2002). The two minute estimate likely is conservative. The OMB regulation defining ''information'' under the PRA generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.*, the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

[36] *See supra* text accompanying note 18. As noted above, only sellers, not telemarketers, will have compliance obligations attributable to the 2008 TSR amendments.

[37] During the initial three months of overall PRA clearance sought that will overlap with the remaining phase-in period (May 31—August 31, 2009) before the written agreement requirement takes effect, the Commission will permit sellers to use prerecorded message calls made to existing customers to secure their agreements to receive prerecorded calls by pressing a key on their telephone keypad. Once a script is written and recorded, it can be used in all calls made by or on behalf of the seller to obtain the required agreements. Sellers will be able to include the request for the agreement in their regular prerecorded calls, thus making the time necessary to request the required agreements, and the cost of doing so, *de minimis* during the year-long phase-in that will partly overlap with the final year of the current PRA clearance.

[38] This figure includes both the minimal time required to create the electronic form and the time to encode it in HTML for the seller's website.

prerecorded calls;[39] and (4) related legal consultation, if needed, regarding compliance. Annualized for an ''average'' year over the prospective 3-year PRA clearance (May 31, 2009—May 31, 2012), this amounts to 3,747 hours per year.

The required opt-out disclosure for all prerecorded calls mandated by the 2008 amendments would not require any greater time increment, and arguably less, than the pre-existing FCC disclosure provision.[40] In any event, because the ''opt-out'' disclosure applies only to prerecorded calls, which are fully automated, no additional manpower hours would be expended in its electronic delivery.

Estimated Annual Labor Cost: $21,498,863

Estimated Annual Non-Labor Cost: $6,502,350

Recordkeeping Labor and Non-Labor Costs:

A. Live Telemarketing Call Provisions of the TSR

1. Labor Costs

Assuming a cumulative burden of 7,500 hours/year to set up compliant recordkeeping systems for new telemarketing entities (75 new entrants/year x 100 hours each), and applying to that a skilled labor rate of $25/hour,[41] labor costs would approximate $187,500 yearly for all new telemarketing entities. As indicated above, staff estimates that existing telemarketing entities require 14,335 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical wage rate of $14/hour, recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately $200,690.

Thus, estimated labor cost for recordkeeping associated with the TSR for both new and existing entities, including the prerecorded call amendment, is $388,190.

2. Non-Labor Costs

Staff believes that the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records, but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life. The Rule's disclosure requirements require no capital expenditures.

Affected entities need some storage media such as file folders, computer diskettes, or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimates that the approximately 14,335 telemarketers subject to the Rule spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $716,750.

B. Prerecorded Call Amendment

1. Labor Costs

As noted above, staff estimates that 2,810 existing sellers that make use of prerecorded calls will require 937 hours, cumulatively, on an annualized basis projected over the anticipated future term of PRA clearance, to comply with the amendment's recordkeeping requirements. Staff assumes that the aforementioned tasks will be performed by managerial and/or professional technical personnel, at an hourly rate of $42.[42] Accordingly, incremental labor cost on an annualized basis would total $39,354.

2. Non-Labor Costs

Other than the initial recordkeeping costs, the amendment's written agreement requirement will impose *de minimis* costs, as discussed above. The one possible exception that might arise involves credit card or loyalty program agreements that retailers revise to request agreements from consumers to receive prerecorded calls. Retailers might have to replace any existing supplies of such agreements. Staff believes, however, that the one-year phase-in of the written agreement requirement will allow retailers to exhaust existing supplies of any such preprinted forms, so that no material additional cost would be incurred to print revised forms.

Disclosure Burden Labor & Non-labor Costs

A. Live Telemarketing Call Provisions of the TSR

1. Labor Costs

The estimated annual labor cost for disclosures for all telemarketing entities is $20,901,764. This total is the product of applying an assumed hourly wage rate of $13[43] to the earlier stated estimate of 1,607,828 hours pertaining to general and specific disclosures in initial calls, upsells, and supplying basic identifying information to the Registry operator.

2. Non-Labor Costs

Oral disclosure estimates, discussed above, totaling 1,607,111 hours, applied to a retained estimated commercial calling rate of 6 cents per minute ($3.60 per hour), amounts to $5,785,600 in phone-related costs.[44] This excludes the 717 hours of reporting hour burden applicable to entities submitting identifying information to access the Registry, which is done online and, for which, non-labor costs would be *de minimis*.

Staff believes that the estimated 2,447 inbound telemarketing entities choosing to comply with the Rule through written disclosures incur no additional capital or operating expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business. Adding the required disclosures to that written information likely requires no supplemental non-labor expenditures.

B. Prerecorded call amendment

1. Labor Costs

Staff estimates that approximately 75% of the disclosure-related tasks

[39] The Commission has provided suggested language for this purpose that should minimize the time required to modify any paper disclosures. 73 FR at 51181.

[40] The FCC has required a similar disclosure for all prerecorded calls to consumers since 1993. 47 CFR 64.1200(b)(2) (requiring disclosure of a telephone number ''[d]uring or after the message'' that consumers who receive a prerecorded message call can use to assert a company-specific do-not-call request).

[41] This rounded figure is derived from the mean hourly earnings shown for computer support specialists found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See* (*http://www.bls.gov/ncs/ncswage2007.htm*).

[42] This hourly wage is based on (*http://www.bls.gov/ncs/ncswage2007.htm*) (National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages), and reflects a blending of mean hourly earnings for various managerial subcategories (operations, advertising, marketing, sales) and computer systems analysts.

[43] This rounded figure is derived from the mean hourly earnings shown for telemarketers found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See* (*http://www.bls.gov/ncs/ncswage2007.htm*).

[44] Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally be above such costs.

previously noted would be performed by managerial and/or professional technical personnel, again, at an hourly rate of $42, with 25% allocable to legal staff, at an hourly rate of $55.[45]

Thus, of the 3,747 total estimated disclosure burden hours, 2,810 hours would be attributable to managerial and/or professional technical personnel, with the remaining 937 hours attributable to legal staff. This yields $118,020 and $51,535, respectively, in labor costs—in total, $169,555.

2. Non-Labor Costs

The amendment requires sellers seeking written agreements from consumers to disclose clearly and conspicuously that the purpose of the agreement is to authorize the seller to place prerecorded calls to them. Other than the initial recordkeeping costs, this disclosure requirement will impose *de minimis* costs, for the reasons discussed above.

Similarly, staff has no reason to believe that the amendment's requirement of an automated interactive opt-out mechanism will impose other than *de minimis* costs, for the reasons discussed above. The industry comments on the amendment uniformly support the view that automated interactive keypress technologies are now affordable, cost-effective, and widely available.[46] Moreover, most, if not all of the industry telemarketers who commented, including many small business telemarketers, said they are currently using interactive keypress mechanisms. Thus, it does not appear that this requirement will impose any material capital or other non-labor costs on telemarketers.

Thus, cumulatively for the live telemarketing call provisions of the TSR and the prerecorded call amendment, total labor costs are $21,498,863 ($388,190 + $39,354 + $20,901,764 + $169,555); total capital and other non-labor costs are $6,502,350 (office supplies and phone-related costs).

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[FR Doc. E9–12414 Filed 5–27–09: 8:45 am]

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[45] This rounded figure is derived from the mean hourly earnings shown for lawyers found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). *See* (*http://www.bls.gov/ncs/ncswage2007.htm*).

[46] *See, e.g.*, Comment by IAC/InterActiveCorp & HSN LLC, #525547–00600 (Dec. 18, 2006), at 3, available at (*http://www.ftc.gov/os/comments/tsrrevisedcallabandon/index.shtm*) (Comment No. 278 of 631).

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Office of Citizen Services and Communications; Submission for OMB Review; Market Research Collection

AGENCY: Office of Citizen Services and Communications, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Market Research for the Office of Citizen Services and Communications. The OMB clearance currently expires on July 31, 2009.

This information collection will be used to determine the utility and ease of use of GSA's Web site, *http://www.gsa.gov.* The respondents include individuals and representatives from businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Jocelyn Johnson, Office of Citizen Services and Communications, at telephone (202) 208–0043, or via e-mail to *jocelyn.johnson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection is to inform GSA on how to best provide service and relevance to the American public via GSA's Web site *http://www.gsa.gov.* The information collected from an online survey, focus groups, and Web site usability testing will be used to refine the *http://www.gsa.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other for-profit groups.

B. Annual Reporting Burden

Respondents: 190.
Responses per Respondent: 1.
Hours per Response: 72.6 minutes.
Total Burden Hours: 230.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9–12385 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–CX–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Office of Citizen Services and Communications; Submission for OMB Review; Market Research Collection

AGENCY: Office of Citizen Services and Communications, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Market Research for the Office of Citizen Services and Communications. The OMB clearance currently expires on July 31, 2009.

This information collection will be used to determine the utility and ease of use of GSA's Web site, *http://www.gsa.gov.* The respondents include individuals and representatives from

businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Jocelyn Johnson, Office of Citizen Services and Communications, at telephone (202) 208–0043, or via e-mail to *jocelyn.johnson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection is to inform GSA on how to best provide service and relevance to the American public via GSA's Web site *http://www.gsa.gov.* The information collected from an online survey, focus groups, and Web site usability testing will be used to refine the *http://www.gsa.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other for-profit groups.

B. Annual Reporting Burden

Respondents: 190.

Responses per Respondent: 1.

Hours per Response: 72.6 minutes.

Total Burden Hours: 230.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

Dated: May 15, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9–12369 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–CX–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0228]

Office of Civil Rights; Information Collection; Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Civil Rights, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding nondiscrimination in Federal financial assistance programs. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance. The clearance currently expires on July 31, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Sloan Farrell, Compliance Officer, Office of Civil Rights, at telephone (202) 501–4347 or via e-mail to *sloan.farrell@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, Room 4041, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal Financial Assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA. These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there have been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there have been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

B. Annual Reporting Burden

Respondents: 200.

Responses per Respondent: 1.

Total Responses: 200.

Hours per Response: 2.

Total Burden Hours: 400.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

Dated: May 14, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9–12346 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–CX–P

GENERAL SERVICES ADMINISTRATION

Office of Small Business Utilization; Small Business Advisory Committee; Notification of a Public Meeting of the Small Business Advisory Committee

AGENCY: Office of Small Business Utilization, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing a public meeting of the GSA Small Business Advisory Committee (the Committee). The purpose of this meeting is to develop the topics generated during the previous meetings; to receive briefings from small business topical experts, and to hear from interested members of the public on proposals to improve GSA's small business contracting performance.

DATES: The meeting will take place June 8, 2009. The meeting will begin at 1 p.m. and conclude no later than 5 p.m. that day. The Committee will accept oral public comments at this meeting and has reserved a total of thirty minutes for this purpose. Members of the public wishing to reserve speaking time must contact Lucy Jenkins in writing at: *sbac@gsa.gov* or by fax at (202) 501–2590, no later than one week prior to the meeting.

ADDRESSES: The meeting location is Henry N. Gonzalez Convention Center, San Antonio, TX, Room 006D.

FOR FURTHER INFORMATION CONTACT: Lucy Jenkins, Room 6033, GSA Building, 1800 F Street, NW., Washington, DC 20405, (202) 501–1445 or e-mail at *sbac@gsa.gov.*

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of this meeting is to develop the topics generated during the previous meetings; to receive briefings from small business topical experts, and to hear from interested members of the public on proposals to improve GSA's small business contracting performance.

Topics for this meeting will include recommendations from the Service Disabled Veteran Owned Small Business subcommittee. Other topics to be discussed may include, but are not limited to, topics from previous meetings. The agenda will be published online at *http://www.gsa.gov/sba*c at least 7 days prior to the meeting. Information and agendas from previous meetings can be found on line at *http://www.gsa.gov/sbac.*

Dated: May 7, 2009.

Mary Parks,

Acting Associate Administrator, Office of Small Business Utilization, General Services Administration.

[FR Doc. E9–12363 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Office of Small Business Utilization; Small Business Advisory Committee; Notification of a Public Meeting of the Small Business Advisory Committee, Subcommittee on Service-Disabled Veteran-Owned Small Businesses

AGENCY: Office of Small Business Utilization, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing a public meeting of the GSA Small Business Advisory Committee, Subcommittee on Service-Disabled Veteran-Owned Small Businesses (the Subcommittee). The purpose of this meeting is to generate topics for future discussion and to hear from interested members of the public on proposals to improve GSA's SDVOSB contracting performance.

DATES: The meeting will take place June 8, 2009. The meeting will begin at 8:30 a.m. and conclude no later than 12 p.m. that day. The Subcommittee will accept oral public comments at this meeting and has reserved a total of thirty minutes for this purpose. Members of the public wishing to reserve speaking time must contact the DFO in writing at: *sbac@gsa.gov* or by fax at (202) 501–2590, no later than one week prior to the meeting. Individuals interested in attending the meeting should contact the DFO prior to the meeting date to expedite security procedures for building admittance.

ADDRESSES: The meeting location is Henry B. Gonzalez Convention Center, San Antonio, TX Room 006D.

FOR FURTHER INFORMATION CONTACT: Lucy Jenkins, Room 6033, GSA Building, 1800 F Street, NW., Washington, DC 20405 (202) 501–1445 or e-mail at *sbac@gsa.gov.*

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of this meeting is to generate topics for future discussion and to hear from interested members of the public on proposals to improve GSA's SDVOSB contracting performance.

Topics for this meeting will include but are not limited to welcoming the members to the subcommittee, the members annual ethics briefing and discussion of GSA's Veteran Outreach Program (21 Gun Salute) and improvements to the program. Information on the full Small Business Advisory Committee can be found online at *http://www.gsa.gov/sbac.*

Dated: May 7, 2009.

Mary Parks,

Acting Associate Administrator, Office of Small Business Utilization, General Services Administration.

[FR Doc. E9–12411 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Revised Privacy Act System of Records

AGENCY: General Services Administration.

ACTION: Notice of a revised Privacy Act system of records.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and compliant with OMB M–07–16. This notice is an updated Privacy Act system of records notice.

EFFECTIVE DATE: The system of records will become effective without further notice on June 29, 2009 unless comments received on or before that date result in a contrary determination.

FOR FURTHER INFORMATION CONTACT Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA reviewed this Privacy Act system of record to ensure that it is relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and is in compliance with the Secure Flight program. Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records.

Dated: May 14, 2009

Cheryl M. Paige,

Director, Office of Information Management.

GSA/PPFM—3

SYSTEM NAME:

Travel System

SYSTEM LOCATION:

The system of records is located in the General Services Administration (GSA) Central Office, service and staff offices and administrative offices throughout GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

GSA current and former employees and travelers of commissions, committees, and small agencies serviced by GSA, including persons other than full-time employees authorized to travel on Government business.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides control over the expenditure of funds for travel, relocation, and related expenses. Therefore, provisions are made to authorize travel and relocation, provide and account for advances, and to pay for travel and relocation costs. The system contains records that may include, but are not limited to, name, Social Security Number, date of birth, gender, passport number, redress number, known traveler number, residence address, dependents' names and ages, duty stations, itinerary and credit data in the form of credit scores (examples of credit scores are FICO, an acronym for Fair Isaac Corporation, a Beacon score, etc.) or commercial and agency investigative reports showing debtors' assets, liabilities, income, expenses, bankruptcy petitions, history of wage garnishments, repossessed property, tax liens, legal judgments on debts owed, and financial delinquencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701—5709, 5 U.S.C. 5721—5739, and Section 639 of the Consolidated Appropriations Act, 2005 (Pub. L. 108—447).

PURPOSE:

To assemble in one system information supporting the day-to-dayoperating needs associated with managing the GSA travel and relocationprograms. The system includes an automated information system and supporting documents.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees or contractors to conduct official duties associated with the management and operation of the travel and relocation program. Information from this system also may be disclosed as a routine use:

a. To another Federal agency, Travel Management Center (TMC), online booking engine suppliers and the airlines that are required to support the DHS/TSA Secure flight program. In this program, DHS/TSA assumes the function of conducting pre-flight comparisons of airline passenger information to federal government watch lists. In order to supply the appropriate information, these mentioned parties are responsible for obtaining new data fields consisting of personal information for date of birth, gender, known traveler number and redress number. At this time, the redress number and known traveler number are optional but may be required to be stored in another phase of the Secure Flight program.

b. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

c. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

e. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

f. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

h. To the National Archives and Records Administration (NARA) for records management purposes.

i. To the Office of Management and Budget in connection with reviewing private relief legislation at any stage of the coordination and clearance process.

j. To banking institutions so that travelers may receive travel reimbursements by electronic funds transfer (EFT).

k. To the Department of the Treasury regarding overseas travel allowancesthat are excluded from taxable income, so that reports can be compiled and submitted to the Congress.

l. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and/or boxes and stored in cabinets or file room until archived at NARA; magnetic tapes and cards are stored in cabinets and storage libraries; and computer records are stored within computers and attached equipment or other electronic media.

RETRIEVABILITY:

Paper records are filed by name or by identifying number.Electronic records are retrievable by name, vendor number (an identifier assigned by GSA to all payees, including companies and individuals), or Social Security Number.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A130. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. Paper records are stored in secure cabinets or rooms. Electronic records are protected by passwords and other appropriate security measures.

DISPOSAL:

The agency disposes of the records as described in the HB, GSA Records Maintenance and Disposition System (CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Director, Financial Initiative Division (BCD), Office of Financial Policy and

Operations, Office of the Chief Financial Officer, General Services Administration, 1800 F Street, NW., Washington DC, 20405.

NOTIFICATION PROCEDURE:

Employees may obtain information about whether they are a part of this system of records from the system manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published at 41 CFR Part 105—64.

RECORD SOURCE CATEGORIES:

The sources are individuals, other employees, supervisors, other agencies, management officials, and non-Federal sources such as private firms.

[FR Doc. E9–12372 Filed 5–27–09; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; Health Information Technology Extension Program

ACTION: Notice and request for comments.

SUMMARY: This notice announces the draft description of the program for establishing regional centers to assist providers seeking to adopt and become meaningful users of health information technology, as required under Section 3012(c) of the Public Health Service Act, as added by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (ARRA).

DATES: All comments on the draft Plan should be received no later than 5 p.m. on June 11, 2009.

ADDRESSES: Electronic responses are preferred and should be addressed to *HealthIT-comments@hhs.gov*. Written comments may also be submitted and should be addressed to the Office of the National Coordinator for Health Information Technology, 200 Independence Ave, SW., Suite 729D, Washington, DC 20201, Attention: Health IT Extension Program Comments.

FOR FURTHER INFORMATION CONTACT: The Office of the National Coordinator for Health, Information Technology, 200 Independence Ave, SW., Suite 729D, Washington, DC 20201, Phone 202–690–7151, E-mail: *onc.request@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (ARRA) includes provisions to promote the adoption of interoperable health information technology to promote meaningful use of health information technology to improve the quality and value of American health care. These provisions are set forth in Title XIII of Division A and Title IV of Division B, which may together be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act''.

The ARRA appropriates a total of $2 billion in discretionary funding, in addition to incentive payments under the Medicare and Medicaid programs for providers' adoption and meaningful use of certified electronic health record technology.

Providers that seek to adopt and effectively use health information technology (health IT) face a complex variety of tasks. Those tasks include assessing needs, selecting and negotiating with a system vendor or reseller, and implementing workflow changes to improve clinical performance and, ultimately, outcomes. Past experiences have shown that without robust technical assistance, many EHRs that are purchased are never installed or are not used by some providers.

Section 3012 of the Public Health Service Act (PHSA), as added by the HITECH Act, authorizes a Health Information Technology Extension Program to make assistance available to all providers, but with priority given to assisting specific types of providers. By statute, the health information technology extension program (or ''Extension Program'') consists of a National Health Information Technology Research Center (HITRC) and Regional Extension Centers (or ''regional centers'').

The major focus for the Centers' work with most of the providers that they serve will be to help to select and successfully implement certified electronic health records (EHRs). While those providers that have already implemented a basic EHR may not require implementation assistance, they may require other technical assistance to achieve ''meaningful user'' status. All regional centers will assist adopters to effectively meet or exceed the requirements to be determined a ''meaningful user'' for purposes of earning the incentives authorized under Title IV of Division B. Lessons learned in the support of providers, both before and after their initial implementation of the EHR, will be shared among the regional centers and made publicly available.

The HITECH Act prioritizes access to health information technology for uninsured, underinsured, historically underserved and other special-needs populations, and use of that technology to achieve reduction in health disparities. The Extension Program will include provisions in both the HITRC and regional centers awards to assure that the program addresses the unique needs of providers serving American Indian and Alaska Native, non-English-speaking and other historically underserved populations, as well as those that serve patients with maternal, child, long-term care, and behavioral health needs.

II. Detailed Explanation and Goals of the Program

The HITECH Act directs the Secretary of Health and Human Services, through the Office of the National Coordinator for Health Information Technology (ONC), to establish Health Information Technology Regional Extension Centers to provide technical assistance and disseminate best practices and other information learned from the Center to support and accelerate efforts to adopt, implement and effectively utilize health information technology. In developing and implementing this and other programs pursuant to the HITECH Act, ONC is consulting with other Federal agencies with demonstrated experience and expertise in information technology services, such as the National Institute of Standards and Technology.

We propose that the goals of the regional center program should be to:

—Encourage adoption of electronic health records by clinicians and hospitals;
—Assist clinicians and hospitals to become meaningful users of electronic health records; and
—Increase the probability that adopters of electronic health record systems will become meaningful users of the technology.

The HITECH Act states that ''the objective of the regional centers is to enhance and promote the adoption of health information technology through—

(A) Assistance with the implementation, effective use, upgrading, and ongoing maintenance of health information technology,

including electronic health records, to healthcare providers nationwide;

(B) broad participation of individuals from industry, universities, and State governments;

(C) active dissemination of best practices and research on the implementation, effective use, upgrading, and ongoing maintenance of health information technology, including electronic health records, to health care providers in order to improve the quality of healthcare and protect the privacy and security of health information;

(D) participation, to the extent practicable, in health information exchanges;

(E) utilization, when appropriate, of the expertise and capability that exists in Federal agencies other than the Department; and

(F) integration of health information technology, including electronic health records, into the initial and ongoing training of health professionals and others in the healthcare industry that would be instrumental to improving the quality of healthcare through the smooth and accurate electronic use and exchange of health information.''

To achieve the centers' statutory objectives, we propose to establish regional centers to offer to all providers in a designated region access to information and to some level of assistance. The regional centers will become, upon award, members of a consortium that will be coordinated and facilitated by the Health Information Technology Research Center (HITRC) that the Secretary is directed to establish by Section 3012(b) of the PHSA as added by the HITECH Act. Whereas research and analysis of best practices regarding health IT utilization rests primarily with the HITRC, dissemination and implementation of those best practices learned from the HITRC will rest with the regional centers.

Per Section 3012(c)(4) of the PHSA as added by the HITECH Act, each regional center shall ''aim to provide assistance and education to all providers in a region but shall prioritize any direct assistance first to the following:

- Public or not-for-profit hospitals or critical-access hospitals.
- Federally qualified health centers (as defined in section 1861(aa)(4) of the Social Security Act).
- Entities that are located in rural and other areas that serve uninsured, underinsured, and medically underserved individuals (regardless of whether such area is urban or rural).
- Individual or small group practices (or a consortium thereof) that are primarily focused on primary care.''

Regional centers will therefore, as a core purpose of their establishment, furnish direct, individualized, and (as needed) on-site assistance to individual providers. This intensive assistance is, per statute, to be prioritized to providers identified in the statute. We expect that on-site assistance will be a key service offered by the regional centers to providers prioritized by the statute for direct assistance, and will represent a significant portion of the regional centers' activities.

Because of the nationwide scope of the Medicare and Medicaid payment incentives for adoption and meaningful use of certified EHRs, the Extension Program should provide at least a minimal level of technical assistance across the nation. We propose that the minimal level of support must include the provision of unbiased information on mechanisms to exchange health information in compliance with applicable statutory and regulatory requirements, and information to support the effective integration of health information exchange activities into practice workflow.

It is expected that each regional center will provide technical assistance within a defined geographic area, and that each defined geographic area will be served by only one center. At a minimum, the support should consist of materials designed to be widely and rapidly disseminated, both for provider self-study and for use by entities other than regional centers that have an interest and the ability to provide some assistance and information to providers adopting health IT.

As required by Section 3012(c)(8) of the Public Health Service Act as added by the HITECH Act, all regional centers will be evaluated to ensure they are meeting the needs of the health providers in their geographic area in a manner consistent with specified statutory objectives. All lessons learned from these efforts will be exchanged across regional centers, and with other stakeholders, including but not limited to other federal programs, to promote the availability of highly effective support to providers across the nation. All regional centers will be expected to use the lessons learned as important, but not the only, information to guide their internal self-evaluation and ongoing improvement processes.

A. Criteria for Determining Qualified Applicants

Section 3012(c)(2) of the PHSA as added by the HITECH Act requires that: ''Regional centers shall be affiliated with any United States-based nonprofit organization, or group thereof, that applies and is awarded financial assistance under this section. Individual awards shall be decided on the basis of merit.'' In addition, we propose the following requirements and preference criteria.

Required Criteria may include:

- Define the geographic region and the provider population within that region it proposes to serve.
- Describe proposed levels and approaches of support for prioritized and other providers to be served.
- Address how the applicant would structure its organization and staffing to enable providers served to have ready access to reasonably local health IT ''extension agents'' and provide training and on-going support for these critical workers.
- Demonstrate the capacity to facilitate and support cooperation among local providers, health systems, communities, and health information exchanges.
- Demonstrate that the applicant is able to meet the needs of providers prioritized for direct assistance by Section 3012(c)(4) of the PHSA as added by the HITECH Act.
- Propose an efficient and feasible strategy to furnish deep specialized expertise (in such areas as organizational development, legal issues, privacy and security, economic and financing issues, and evaluation) broadly to all providers served and intensive, individualized, ''local'' presence from an interdisciplinary extension agent to smaller groups of providers assigned to individual agents.

Preference Criteria may include:

- We propose to give preference to proposed regional center organizational plans and implementation strategies incorporating multi-stakeholder collaborations that leverage local resources. The local stakeholders and resources that applicants may wish to consider including in some combination, though not limited to, the following: Public and/or private universities with health professions, informatics, and allied health programs; state or regional medical/professional societies and other provider organizations; federally recognized state primary care associations; state or regional hospital organizations; large health centers and networks of rural and/or community health centers; other relevant health professional organizations; the regionally relevant state Area Health Education Center(s); health information exchange organizations serving providers in the

region; the Medicare Quality Improvement Organization(s)(QIO(s) serving providers that the proposed regional center aims to serve; state and tribal government entities in the center's geographic service area including, but not limited to, public health agencies; libraries and information centers with health professional and community outreach programs; and consumer/patient organizations.

• As noted below, we propose to give preference to applicants identifying viable sources of matching funds. Viable sources could include grants from states, non-profit foundations, and payment for services from providers able to make such payment. For example, Medicaid providers could choose to contract with a regional center in lieu of a corporate vendor for implementation and meaningful use support services, for which costs are reimbursable under Section 1903 of the Social Security Act, as amended by the HITECH Act. A regional center could also, theoretically, seek to establish itself as a first-choice source of assistance that would realize net retained earnings on service to non-prioritized providers and use those retained earnings as a source of matching funds for its grant-funded activities.

B. Maximum Support Levels Expected To Be Available to Centers Under the Program

Given current national economic conditions, we propose to exercise the option in the HITECH Act to not require matching funds for awards made in FY 2010. We will encourage use of matching funds and the coordination of existing resources to strengthen proposals for regional centers and potentially expand the number of providers that can be assisted. Review criteria may be established that give preference to proposals including matching funds but that do not automatically preclude otherwise technically meritorious proposals that do not include matching funds.

We propose using ARRA funding for two-year awards made in FY2010 and furnishing providers in awardees' areas with robust support. While we expect the actual ARRA funding awarded per center will vary based on the number and types of providers proposed to be served, and the amount of matching funds proposed by each regional center, we anticipate an average award value on the order of $1 million to $2 million per center. The maximum award value we anticipate making available to any one regional center is $10 million. Funding may also be approximately allocated to the regional centers in relative proportion to the numbers of prioritized direct assistance recipients identified in the HITECH Act.

C. Procedures To Be Followed by the Applicants

Timelines

This notice makes public and invites comments on the draft description of the regional centers program and is not a solicitation of proposals to serve as extension centers under this program. The Federal Government will award funding for the regional centers through a solicitation of proposals, after considering the comments obtained through this notice. The availability of this solicitation will be broadly announced through appropriate and familiar means, including publication in the **Federal Register** of a Notice of the solicitation's availability. This announcement of the solicitation will provide further details on the finalized requirements and application process for regional centers, pursuant to and in compliance with all applicable statutes and regulations, including but not limited to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Applicants well prepared to provide robust extension services will likely need at least two months to provide high quality proposals. It is expected, however, that other potential applicants will need more time to prepare proposals.

We propose to make initial awards for regional centers as early as the first quarter of FY2010 and continuing through the fourth quarter of FY2010. Multiple, closely spaced proposal submission dates will be established to allow each geographic area to begin receiving benefit of a regional center as soon as possible. We believe this approach is necessary to allow areas with well prepared applicants to begin work sooner, without excluding from consideration those areas where the best applicants require more time to convene a multi-stakeholder collaboration to develop a robust proposal that includes a viable organizational plan and implementation strategy. We solicit comment on our phased approach to proposal submission dates and issuance of awards.

The target timeframe for awards is intended to enable regional centers to begin supporting provider adoption in time for providers to receive incentive payments with respect to Fiscal Year (hospitals) or Calendar Year (physicians) 2011 and 2012, when potential Medicare incentives are greatest.

D. Comments on Draft Description

ONC requests comments on this draft description of the regional centers within the Extension Program. Please send comments to the address, for receipt by the due date, specified at the beginning of this notice.

Dated: May 22, 2009.

Charles P. Friedman,

Deputy National Coordinator for Health Information Technology.

[FR Doc. E9–12419 Filed 5–27–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–0923–09BR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Registration of individuals with Amyotrophic Lateral Sclerosis (ALS) in the National ALS Registry—New—Agency for Toxic Substances and Disease Registry (ATSDR), Coordinating

Center for Environmental Health and Injury Prevention (CCEHIP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 10, 2008, President Bush signed S. 1382: ALS Registry Act which amended the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis (ALS) Registry. The activities described are part of the effort to create the National ALS Registry. The purpose of the registry is to: (1) Better describe the incidence and prevalence of ALS in the United States; (2) examine appropriate factors, such as environmental and occupational, that might be associated with the disease; (3) better outline key demographic factors (such as age, race or ethnicity, gender, and family history) associated with the disease; and (4) better examine the connection between ALS and other motor neuron disorders that can be confused with ALS, misdiagnosed as ALS, and in some cases progress to ALS. The registry will collect personal health information that may provide a basis for further scientific studies of potential risks for developing ALS.

During a workshop held by The Agency for Toxic Substances and Disease Registry (ATSDR) in March 2006 to discuss surveillance of selected autoimmune and neurological diseases, it was decided to develop a proposal to build on work that had already been done and coordinate existing datasets to create a larger database, rather than to start from scratch with medical records review and physician reporting. Four pilot projects were funded to evaluate the accuracy and reliability of existing data from the Center for Medicare and Medicaid Services (CMS) and various datasets from the Veterans Administration. Preliminary results indicate that additional ways to identify cases of ALS will be necessary to increase completeness of the registry. Therefore, ATSDR developed a Web site where individuals will register and will also have the opportunity to provide additional information on such things as occupation, military service, and family history of ALS, which is not available in existing records.

The registration portion of the data collection will be limited to information that can be used to identify an individual to assure that there are not duplicate records for an individual. Avoiding duplication of registrants due to obtaining records from multiple sources is imperative to get accurate estimates of incidence and prevalence, as well as accurate information on demographic characteristics of the cases of ALS.

In addition to questions required for registration, there will be a series of short surveys to collect information on such things as military history, occupations, and family history that would not likely be available from other sources.

This project proposes to collect information on individuals with ALS which can be combined with information obtained from existing sources of information. This combined data will become the National ALS Registry and will be used to provide more accurate estimates of the incidence and prevalence of disease as well as the demographic characteristics of the cases. Information obtained from the surveys will be used to better characterize potential risk factors for ALS which will lead to further in-depth studies.

The existence of the Web site will be advertised by ATSDR and advocacy groups such as the Amyotrophic Lateral Sclerosis Association (ALSA) and the Muscular Dystrophy Association (MDA).

There will be approximately 30,000 individuals living with ALS when the National ALS Registry is initiated, and it is estimated that approximately 25% of those individuals will also participate. In addition, approximately 6,000 people are diagnosed with ALS each year and we expect about one-third of them will participate in the registry. Because an advantage to registration is participating in the surveys, we expect the one time surveys, and the twice yearly survey participation rate will be 50%.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Data collection instruments/respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Validation questions (Screener) for suspected ALS cases	6,000	1	2/60	200
Registration Form of ALS cases	4,667	1	7/60	544
Cases of ALS completing 1-time surveys	2,334	6	5/60	1167
Cases of ALS completing twice yearly surveys	2,334	2	5/60	389
Total				2300

Dated: May 20, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–12397 Filed 5–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0214]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Health Interview Survey (NHIS), (OMB No. 0920–0214)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2010, 2011, and 2012. This voluntary household-based survey collects demographic and health-related information on a nationally representative sample of persons and households throughout the country. Information is collected using computer assisted personal interviews (CAPI). A core set of data is collected each year while sponsored supplements vary from year to year. For 2010, supplement information will be collected on cancer, occupational injury, epilepsy, and child mental health. The child mental health component includes a follow-up study to assess the validity of a short series of questions for measuring mental distress in children.

In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, diabetes, and access to health care. It is a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2010.''

There is no cost to the respondents other than their time.

ANNUALIZED BURDEN TABLE

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per response in hours	Total burden in hours
Screener Questionnaire (adult family member)	10,000	1	5/60	833
Family Core (adult family member)	33,000	1	23/60	12,650
Adult Core (sample adult)	25,000	1	17/60	7,083
Child Core (adult family member)	10,000	1	9/60	1,500
Adult Cancer (sample adult)	25,000	1	19/60	7,917
Child Cancer (adult family member)	10,000	1	1/60	167
Adult Occupational Injury (sample adult)	25,000	1	2/60	833
Adult Epilepsy (sample adult)	25,000	1	1/60	417
Child Mental Health (adult family member)	10,000	1	2/60	333
Child Mental Health Follow-Up (parent)	430	1	40/60	287
Child Mental Health Follow-Up (child)	319	1	28/60	149
Re-interview Survey)		1	5/60	250
Total Burden Hours				32,419

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–12393 Filed 5–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0050]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 29, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0046. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Importer's Entry Notice (OMB Control Number 0910–0046)—Extension

In order to make an admissibility decision for each entry, FDA needs four additional pieces of information that are not available in the U.S. Customs and Border Protection's (CBP's) dataset. These data elements are the FDA Product Code, FDA country of production, FDA manufacturer/shipper, and ultimate consignee. It is the ''automated'' collection of these four data elements for which OMB approval is requested. FDA construes this request as an extension of the prior approval of collection of this data via a different media, i.e., paper. There are additional data elements which filers can provide to FDA along with other entry-related information which, by doing so, may result in their receiving an FDA admissibility decision more expeditiously, e.g., the quantity, value, and Affirmation(s) of Compliance with Qualifier(s).

At each U.S. port of entry (seaport, landport, and airport) where foreign-origin FDA-regulated products are offered for import, FDA is notified, through CBP's Automated Commercial System (ACS) by the importer (or his agent) of the arrival of each entry. Following such notification, FDA reviews relevant data to ensure the imported product meets the standards as are required for domestic products, makes an admissibility decision, and informs the importer and CBP of its decision. A single entry frequently contains multiple lines of different products. FDA may authorize specific lines to enter the United States unimpeded, while others in the same entry are to be held pending further FDA review/action.

An important feature developed and programmed into FDA's automated system is that all entry data passes through a screening criteria program. FDA's electronic screening criteria module makes the initial screening decision on every entry of foreign-origin FDA-regulated product. Virtually instantaneously after the entry is filed, the filer receives FDA's admissibility decision covering each entry, i.e., ''MAY PROCEED'' or ''FDA REVIEW.''

Examples of FDA's need to further review an entry include: Products originating from a specific country or manufacturer known to have a history of problems, FDA has no previous knowledge of the foreign manufacturer and/or product, or an import alert covering the product has been issued, etc. The system assists FDA entry reviewers by notifying them of information, such as the issuance of import alerts, thus averting the chance that such information will be missed.

With the inception of the interface with CBP's ACS, FDA's electronic screening criteria program is applied nationwide. This virtually eliminates problems such as ''port shopping,'' e.g., attempts to intentionally slip products through one FDA port when refused by another, or to file entries at a port known to receive a high volume of entries. Every electronically submitted entry line of foreign-origin FDA-regulated product undergoes automated screening described previously. The screening criteria can be set to be as specific or as broad as applicable; changes are virtually immediately effective. This capability is of tremendous value in protecting the public in the event there is a need to immediately halt a specific product from entering the United States.

In the **Federal Register** of February 25, 2009 (74 FR 8549), FDA published a 60-day notice requesting comments on the information collection requirements for FDA regulated products. Two comments were received.

One comment was submitted by the American Association of Exporters and Importers. General comments expressed support for the automation of the data elements sought by FDA. A second comment encouraged FDA to pursue risk management methodologies which will reduce FDA's dependence on transaction data for admissibility decisions. The comments encouraged FDA to develop risk management methodologies using account management techniques assessing the internal controls of foreign manufacturers and U.S. importers will provide FDA with better insight into admissibility decisions before entry of the merchandise.

FDA agrees that risk management methodologies are key to effective and efficient oversight of FDA regulated commodities. However, different commodities may have different risk factors and being able to identify the commodity, where it was manufactured, and who shipped the commodity are essential for FDA to determine the risk factors that should be applied when the product is offered for entry. These data elements are key for FDA in order to apply the appropriate risk strategy.

A second comment was submitted by Organon Schering-Plough. No specific comments were provided about the collection of the additional FDA data elements. The submission suggested that FDA develop a process similar to the ''binding ruling'' process that is maintained by CBP because of the impact on the filers compliance-score rating. However, the development of a ''binding ruling'' process is outside the scope of this announcement.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3,727	1,070	3,988,371	.263	1,048,447

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 20, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12317 Filed 5–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–08AW]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Quarantine Station Illness Response Forms: Airline, Maritime, and Land/Border Crossing—Existing Collection in Use without an OMB Number—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC proposes to collect patient-level clinical, epidemiologic, and demographic data from ill travelers and their possible contacts in order to fulfill its regulatory responsibility to prevent the importation of communicable diseases from foreign countries (42 CFR Part 71) and interstate control of communicable diseases in humans (42 CFR Part 70).

Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the United States. The regulations that implement this law, 42 CFR Parts 70 and 71, authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances (*e.g.*, airplanes, cruise ships, trucks, etc.), persons, and shipments of animals and etiologic agents in order to protect the public health. The regulations also require conveyances to immediately report an ''ill person'' or any death on board to the Quarantine Station prior to arrival in the United States. An ''ill person'' is defined in statute by:

— Fever (≥100° F or 38° C) persisting ≥48 hours.

— Fever (≥100° F or 38° C) and rash, glandular swelling, or jaundice.

— Diarrhea (≥3 stools in 24 hours or greater than normal amount).

The Severe Acute Respiratory Syndrome (SARS) situation and concern about pandemic influenza and other communicable diseases have prompted CDC Quarantine Stations to recommend that *all* illnesses be reported prior to arrival.

CDC Quarantine Stations are currently located at 20 international U.S. Ports of Entry. When a suspected illness is reported to the Quarantine Station, officers promptly respond to this report by meeting the incoming conveyance (when possible), collecting information and evaluating the patient(s), and determining whether an ill person can safely be admitted into the U.S. If Quarantine Station staff is unable to meet the conveyance, the crew or medical staff of the conveyance is trained to complete the required documentation and forward it (using a secure system) to the Quarantine Station for review and follow-up.

To perform these tasks in a streamlined manner and ensure that all relevant information is collected in the most efficient and timely manner possible, Quarantine Stations use a number of forms—the Airline Screening and Illness Response Form, the Ship Illness/Death Reporting Form, and the Land/Border Crossing Form—to collect data on passengers with suspected illness and other travelers/crew who may have been exposed to an illness. These forms are also used to respond to a report of a death aboard a conveyance.

The purpose of all of the forms is the same: to collect information that helps quarantine officials detect and respond to potential public health communicable disease threats. All forms collect the following categories of information: demographics and mode of transportation, clinical and medical history, and any other relevant facts (*e.g.*, travel history, traveling companions, etc.). As part of this documentation, quarantine public health officers look for specific signs and symptoms common to the nine quarantinable diseases (Pandemic influenza; SARS; Cholera; Plague; Diphtheria; Infectious Tuberculosis; Smallpox; Yellow fever; and Viral Hemorrhagic Fevers), as well as most communicable diseases in general. These signs and symptoms include fever, difficulty breathing, shortness of breath, cough, diarrhea, jaundice, or signs of a neurological infection. The forms also collect data specific to the traveler's conveyance.

These data are used by Quarantine Stations to make decisions about a passenger's suspected illness as well as its communicability. This in turn enables Quarantine Station staff to assist conveyances in the public health management of passengers and crew.

The estimated total burden on the public, included in the chart below, can vary a great deal depending on the severity of the illness being reported, the number of contacts, the number of follow-up inquiries required, and who is recording the information (*e.g.*, Quarantine Station staff versus the conveyance medical authority). In all cases, Quarantine Stations have implemented practices and procedures that balance the health and safety of the American public against the public's desire for minimal interference with their travel and trade. Whenever possible, Quarantine Station staff obtain information from other documentation (*e.g.*, manifest order, other airline documents) to reduce the amount of the public burden.

There is no cost to respondents other than their time to complete the survey. The estimated annual burden for this data collection is 172 hours.

ESTIMATE OF ANNUALIZED BURDEN

Respondents	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Quarantine Staff / Crew or Medical Staff	Airline Illness or Death Investigation Form	1320	1	6/60

ESTIMATE OF ANNUALIZED BURDEN—Continued

Respondents	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
	International Maritime Illness or Death Report.	200	1	3/60
	International Maritime Illness or Death Investigation Form.	200	1	7/60
	Land Border Illness or Death Investigation Form.	60	1	6/60

Dated: May 19, 2009.

Maryam I. Daneschvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–12332 Filed 5–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Urban Indian Health Programs; Announcement Type: Title V HIV/AIDS Competing Continuation Grants

Funding Opportunity Number: HHS–2009–IHS–UIHP–0002.

Catalog of Federal Domestic Assistance Number: 93.193.

Key Dates

Application Deadline Date: July 1, 2009.

Review Date: July 15, 2009.

Earliest Anticipated Start Date: September 1, 2009.

I. Funding Opportunity Description

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP) announces an open competition for the 4-in-1 Title V grants responding to an Office of HIV/AIDS Policy (OHAP), Minority AIDS (Acquired Immunodeficiency Syndrome) Initiative (MAI). This program is authorized under the authority of the Snyder Act, Public Law 67–85 and 25 U.S.C. 1652, 1653 of the Indian Health Care Improvement Act, Public Law 94–437, as amended. This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

This open competition seeks to expand OUIHP's existing Title V grants to increase the number of American Indian/Alaska Natives (AI/AN) with awareness of his/her HIV status. This will provide routine and/or rapid HIV screening, prevention, pre- and post-test counseling (when appropriate). Enhancement of urban Indian health program HIV/AIDS activities is necessary to reduce the incidence of HIV/AIDS in the urban Indian health communities by increasing access to HIV related services, reducing stigma, and making testing routine.

These continuation grants will be used to enhance HIV testing, including rapid testing and/or standard HIV antibody testing and to provide a more focused effort to address HIV/AIDS prevention, targeting some of the largest urban Indian populations in the United States. The grantees will attempt to provide routine HIV screening for adults as per 2006 Centers for Disease Control and Prevention (CDC) guidelines, pre- and post-test counseling (when appropriate). These grants will be used to identify best practices to enhance HIV testing, including rapid testing and/or conventional HIV antibody testing, and to provide a more focused effort to address HIV/AIDS prevention in AI/AN populations in the United States.

The nature of these projects will require collaboration with the OUIHP to: (1) Coordinate activities with the IHS National HIV Program; (2) participate in projects in other operating divisions of the Department of Health and Human Services (HHS) such as the CDC, Substance Abuse and Mental Health Services Administration, Health Resource and Services Administration and the Office of HIV/AIDS Policy; and (3) submit and share anonymous, non-identifiable data on HIV/AIDS testing, treatment, and education.

These grants are also intended to encourage development of sustainable, routine HIV screening programs in urban facilities that are aligned with 2006 CDC HIV Screening guidelines (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm*). Key features include streamlined consent and counseling procedures (verbal consent, opt-out), a clear HIV screening policy, identifying and implementing any necessary staff training, community awareness, and a clear followup protocol for HIV positive results including linkages to care. Grantees may choose to bundle HIV tests with STD screening.

II. Award Information

Type of Award: Title V Continuation Grants.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2009 is ten awards totaling $200,000. Individual awards must include one project evaluation and provide administrative support of the project. All future awards under this announcement are subject to the availability of funds. Hence, the agency has no obligation to award additional funding beyond the first year.

Anticipated Number of Awards: Ten grant awards will be made under the program.

Project Period: September 1, 2009–August 31, 2012.

Award Amount: $200,000.

A. Requirements of Recipient Activities

In FY 2009, each grantee's attempted goal shall include screening as many individuals as possible; however, each funded program's *attempted* goal will be to increase screening to a minimum of 300 AI/AN tested per program funded (adjusted due to variations in size of facility and user population), for a total of 4,500 AI/AN tested. This reflects an MAI requirement to maintain the actual cost per MAI Fund HIV testing client below the medical care inflation rate. This does not include counts of re-testing individuals in the same year. Each program shall also collect evidence, as part of the testing process, to document lessons learned, best practices, and barriers to increased routine HIV screening within this population.

III. Eligibility Information

1. *Eligible Applicants:* Urban Indian organizations, as defined by 25 U.S.C. 1603(h), limited to urban Indian organizations which meet the following criteria:

- Received State certification to conduct HIV rapid testing (where needed);

• Health professionals and staff have been trained in the HIV/AIDS screening tools, education, prevention, counseling, and other interventions for AI/ANs;

• Developed programs to address community and group support to sustain risk-reduction skills;

• Implemented HIV/AIDS quality assurance and improvement programs; and

• Must provide proof of non-profit status with the application.

2. *Cost Sharing or Matching*—This program does not require matching funds or cost sharing.

3. If the application budget exceeds the award amount, it will not be considered for review.

IV. Application and Submission Information

1. *Applicant package may be found in Grants.gov (http://www.grants.gov) or at: http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp.*

Questions regarding the electronic application process may be directed to Michelle G. Bulls at (301) 443–6290.

2. *Content and Form of Application Submission:*

• Be single spaced.

• Be typewritten.

• Have consecutively numbered pages.

• Use black type not smaller than 12 characters per one inch.

• Contain a narrative that does not exceed ten typed pages that includes the other submission requirements below. The ten page narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Lobbying and Discrimination public policy.

3. *Submission Dates and Times:* The application from each urban Indian organization must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST) on July 1, 2009.

If technical challenges arise and the urban Indian organizations are unable to successfully complete the electronic application process, each organization must contact Michelle G. Bulls, Grants Policy Staff (GPS) *fifteen days* prior to the application deadline and advise of the difficulties that they are experiencing. Each organization must obtain prior approval, in writing (e-mails are acceptable), from Ms. Bulls allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in Section IV.1 above. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the organizations without review or consideration.

A late application will be returned to the organization without review or consideration.

4. *Intergovernmental Review:* Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. *Funding Restrictions*:

A. Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason any of the urban Indian organizations do not receive an award or if the award to the recipient is less than anticipated.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one competing continuation award will be issued to each organization.

D. IHS will acknowledge receipt of the application.

6. *Other Submission Requirements:*

Electronic Submission—Each urban Indian organization must submit through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov.* The Contact Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance, please call (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. Each organization must seek assistance at least fifteen days prior to the application deadline. If each organization doesn't adhere to the timelines for Central Contractor Registry (CCR), Grants.gov registration and request timely assistance with technical issues, paper application submission may not be granted.

To submit an application electronically, please use the Grants.gov Web site. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

• Under the new IHS application submission requirements, paper applications are not the preferred method. However, if any urban Indian organization has technical problems submitting the application on-line, please contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport.*

• Upon contacting Grants.gov, obtain a Grants.gov tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained. If any of the organizations are still unable to successfully submit the application online, please contact Michelle G. Bulls, GPS, at (301) 443–6290 at least fifteen days prior to the application deadline to advise of the difficulties you have experienced.

• If it is determined that a formal waiver is necessary, each organization must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* providing a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded from Grants.gov and sent directly to the Division of Grants Operations (DGO), 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by July 1, 2009.

• Upon entering the Grants.gov Web site, there is information available that outlines the requirements to each urban Indian organization regarding electronic submission of application and hours of operation. We strongly encourage each organization to not wait until the deadline date to begin the application process as the registration process for CCR and Grants.gov could take up to fifteen working days.

• To use Grants.gov, each urban Indian organization must have a Data Universal Numbering System (DUNS) Number and register in the CCR. Each organization should allow a minimum of ten working days to complete CCR registration. See below on how to apply.

• Each organization must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.

• Each organization must comply with any page limitation requirements described in the program announcement.

• After you electronically submit your application, you will receive an

automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will retrieve your application from Grants.gov. The DGO will notify each organization that the application has been received.

• You may access the electronic application for this program on Grants.gov.

• You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.

• To receive an application package, each urban Indian organization must provide the Funding Opportunity Number: HHS–2009–IHS–UIHP–0002.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS 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. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR ''Registration Worksheet'' located on *http://www.ccr.gov*.

More detailed information regarding these registration processes can be found at Grants.gov.

V. Application Review Information

1. Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include all prior years of activity; information for multi-year projects should be included as an appendix (see E. ''Categorical Budget and Budget Justification'' at the end of this section for more information). The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the urban Indian organization. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

A. Understanding of the Need and Necessary Capacity (15 Points)

1. Understanding of the Problem

a. Define the project target population, identify their unique characteristics, and describe the impact of HIV on the population.

b. Describe the gaps/barriers in HIV testing for the population.

c. Describe the unique cultural or sociological barriers of the target population to adequate access for the described services.

2. Facility Capability

a. Briefly describe your clinic programs and services and how this initiative will assist to commence, compliment and/or expand existing efforts.

b. Describe your clinic's ability to conduct this initiative through:

• Your clinic's present resources.

• Collaboration with other providers.

• Partnerships established to accept referrals for counseling, testing, and referral and confirmatory blood tests and/or social services for individuals who test HIV positive.

• Linkages to treatment and care: partnerships established to refer out of your clinic for specialized treatment, care, confirmatory testing (if applicable) and counseling services.

B. Work Plan (40 Points)

1. Project Goal and Objectives

Address all of the following program goals and objectives of the project. The objectives must be specific as well as quantitatively and qualitatively measurable to ensure achievement of goal(s).

• Implementation Plan

a. Identify the proposed program activities and explain how these activities will increase and sustain HIV screening.

b. Describe Policy and Procedure changes anticipated for implementation that include:

(1) Support of the 2006 CDC Revised HIV Testing Recommendations.

(2) Community awareness.

(3) Age ranges of persons to be screened.

(4) Bundling of HIV testing with STD tests.

(5) Type of HIV Screen/Test (Rapid, Conventional, Western Blot) and who will perform test (in-house, send-out).

c. Provide a clear timeline with quarterly milestones for project implementation.

d. Certify that the program identified and agreed to follow the State regulations for HIV testing in their State and how the clinic will follow their State reporting guidelines for seropositive results.

e. Describe how individuals will be selected for testing to identify selection criteria and which group(s)—if any—will you be able, via State regulations, to offer testing in an opt-out format.

f. Describe how the program will ensure that clients receive their test results, particularly clients who test positive.

g. Describe how the program will ensure that individuals with initial HIV-positive test results will receive confirmatory tests. If you do not provide confirmatory HIV testing, you must provide a letter of intent or Memorandum of Understanding with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.

h. Describe the program strategies to linking potential seropositive patients to care.

i. Describe the program quality assurance strategies.

j. Describe how the program will train, support and retain staff providing counseling and testing.

k. Describe how the program will ensure client confidentiality.

l. Describe how the program will ensure that its services are culturally fluent and relevant.

m. Describe how the program will attempt to streamline procedures so as to reduce the overall cost per test administered.

C. Project Evaluation (20 Points)

1. Evaluation Plan

The grantee shall provide a plan for monitoring and evaluating the HIV rapid test and/or standard HIV antibody test.

2. Reporting Requirements

The following quantitative and qualitative measures shall be addressed:

• Required Quantitative Indicators (Quantitative)

a. Number of tests performed and number of test refusals.

b. Number of clients learning of their serostatus for the first time via this testing initiative (unique patients, non-repeated tests).

c. Number of reactive tests and confirmed seropositive (actual and proportion).

d. Number of clients linked to care/treatment or referrals for prevention counseling.

e. Number of individuals receiving their confirmatory test results.

• Required Qualitative Information.

a. Measures in place to protect confidentiality.

b. Identify barriers of implementation as well as lessons learned for best practices to share with other IHS/Urban or tribal entities.

c. Sustainability plan and measures of ongoing testing in future years, after grant money has been spent.

• Other quantitative indicators may be collected to improve clinic processes and add to information reported; however, they are not required.

a. Number of clients who refused due to prior knowledge of status.

b. Number of rapid versus standard antibody test.

c. Number of false negatives and/or positives after confirmatory testing.

• Develop a plan for obtaining knowledge, attitudes, and behavior data pending official approval of patient survey.

D. Organizational Capabilities and Qualifications (10 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

1. Describe the organizational structure.

2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

3. Describe what equipment (*i.e.*, phone, Web sites, etc.) and facility space (*i.e.*, office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.

4. List key personnel who will work on the project.

• Identify existing personnel and new program staff to be hired.

• In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

• Note who will be writing the progress reports.

• If a position is to be filled, indicate that information on the proposed position description

• If the project requires additional personnel beyond those covered by the supplemental grant, (*i.e.*, Information Technology support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, and the source of these funds.

• If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (15 Points)

This section should provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on routinizing and sustaining HIV testing services as well as reducing the cost per person tested.

1. Categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.

2. Narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.

3. Budget justification should include a brief program narrative for the second and third years.

4. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

2. Review and Selection Process

In addition to the above criteria/requirements, the application will be considered according to the following:

A. The Submission Deadline: July 1, 2009

The application submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

• The applicant is eligible in accordance with this grant announcement.

• The application is not a duplication of a previously funded project.

• The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. The Continuation Review Date is July 15, 2009

Continuation applications that are complete, responsive, and conform to this program announcement will be reviewed for merit. Prior to review, the application will be screened to determine that programs proposed are those which the IHS has the authority to provide, either directly or through funding agreement, and that those programs are designed for the benefit of IHS beneficiaries. If an urban Indian organization does not meet these requirements, the application will not be reviewed. The application will be evaluated and rated on the basis of the evaluation criteria listed in Section V. 1. The criteria are used to evaluate the quality of a proposed project and determine the likelihood of success.

3. Anticipated Announcement and Award Dates

Anticipated announcement date is August 1, 2009 with an Award Date of September 1, 2009.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to the urban Indian organization. The NoA will be signed by the Grants Management Officer and this is the authorizing document under which funds are dispersed. The NoA, the legally binding document, will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded for the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

2. Administrative Requirements

Grants are administered in accordance with the following documents:

• This Program Announcement.

• 45 CFR Part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations.''

• *Grants Policy Guidance:* HHS Grants Policy Statement, January 2007.

• ''Non-Profit Organizations'' (Title 2 Part 230).

• *Audit Requirements:* OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

3. Indirect Costs

This section applies to indirect costs in accordance with HHS Grants Policy Statement, Part II–27. The IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the awarding office, the award shall include funds for reimbursement of indirect costs. However, the indirect costs portion will remain restricted until the current rate is provided to the DGO.

If an urban Indian organization has questions regarding the indirect costs policy, please contact the DGO at (301) 443–5204.

4. Reporting

A. *Progress Report.* Program progress reports on number of tests performed and milestones are required quarterly by the OUIHP in order to satisfy quarterly reports due to funding source at MAI. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for unmet milestones (if applicable), and other pertinent information as required.

B. A Final Assessment and Evaluation report must be submitted within 90 days of expiration of the budget/project period.

C. *Financial Status Report.* Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget period. Standard Form 269 (long form) will be used for financial reporting.

D. Participation in a minimum of two teleconferences. Teleconferences will be required semi-annually (unless further followup is needed) for Technical Assistance and information to be provided and progress to be shared among grantees with the OUIHP and National HIV Program Consultant.

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

For program-related and general information regarding this announcement: Danielle Steward, Health Systems Specialist, Office of Urban Indian Health Programs, 801 Thompson Avenue, Suite 200, Rockville, MD 20852. (301) 443–4680 or *danielle.steward@ihs.gov*.

For specific grant-related and business management information: Denise Clark, Senior Grants Management Specialist, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852. (301) 443–5204 or *denise.clark@ihs.gov*.

Dated: May 20, 2009.

Randy Grinnell,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. E9–12318 Filed 5–27–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Strengthening National Capacity in Malaria and Other Infectious Disease Operations Research, Funding Opportunity Announcement (FOA), CK09–004, Initial Review

June 1, 2009.

Correction: This notice was published in the **Federal Register** on April 29, 2009, Volume 74, Number 81, page 19564. The original notice was published with an incorrect FOA number and incorrect date.

Contact Person for More Information: Wendy Carr, PhD, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop D60, Atlanta, GA 30333. Telephone (404) 498–2276.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 18, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–12328 Filed 5–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: June 8, 2009.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel Chicago, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892. 301–402–4411. *tianbi@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Epidemiology and Population Studies Integrated Review Group, Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Sandra Melnick Seitz, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156,

MSC 7770, Bethesda, MD 20892. 301–435–1251. *melnicks@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MI: Competitive Revisions.

Date: June 8, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Washington Avenue, NW., Washington, DC 20007.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892. (301) 435–2211. *klosekm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MFSR: Review of Competing Revisions.

Date: June 8, 2009.

Time: 3:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel Chicago, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892. (301) 402–4411. *tianbi@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.

Date: June 9, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250. *bishopj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IRAP Revision Applications.

Date: June 9, 2009.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Sandra Melnick Seitz, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, MSC 7770, Bethesda, MD 20892. 301–435–1251. *melnicks@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Child Psychopathology.

Date: June 9, 2009.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 435–4445. *doussarj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Competitive Revision Applications.

Date: June 9, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892. (301) 435–4511. *whitmarshb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Sensorimotor Integration.

Date: June 9, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250. *bishopj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematopoiesis and Stem Cell Regulation.

Date: June 9, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892. (301) 435–1233. *shahb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PBKD Competitive Revision Review.

Date: June 12, 2009.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892. 301–451–1325. *ryssokok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation Imaging.

Date: June 14–17, 2009.

Time: 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express Hotel and Suites, San Francisco Fisherman's Wharf, 550 North Point Street, San Francisco, CA 94133.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892. (301) 435–1174. *dhindsad@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Cancer Biomarkers Study Section.

Date: June 15–16, 2009.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Mary Bell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7802, Bethesda, MD 20892. 301–435–1213. *bellmar@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: June 15, 2009.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892. 301–435–1501. *morrisr@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review

Group, Aging Systems and Geriatrics Study Section.

Date: June 15–16, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: James P. Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892. 301–435–1256. *harwoodj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics of Bacterial Pathogenesis.

Date: June 15–16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892. 301–435–0952. *menzelro@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Nanotechnology Study Section.

Date: June 15–16, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892. (301) 435–2344. *moscajos@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group, Vascular Cell and Molecular Biology Study Section.

Date: June 15–16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Devices.

Date: June 15–16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. 301–435–2204. *matusr@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Tumor Progression and Metastasis Study Section.

Date: June 15–16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

*Place:*Westin Seattle Hotel, 1900 Fifth Avenue, Seattle, WA 98101.

Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892. (301) 435–2477. *zargerma@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: June 15–16, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott North Bethesda, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892. (301) 435–1780. *kims@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: June 15, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892. 301–435–0903. *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Aging Gracefully.

Date: June 16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4800 Military Road, NW., Washington, DC 20015.

Contact Person: James Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892. 301–435–1256. *harwoodj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, LIRR and RIBT Member Conflicts.

Date: June 16–17, 2009.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892. 301–435–0696. *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Research on Ethical Issues in Human Studies.

Date: June 16, 2009.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. 301–435–0681. *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nutrition AARA CR.

Date: June 16, 2009.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892. (301) 435–1780. *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SOAR Review.

Date: June 17–18, 2009.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892. (301) 402–1304. *claytone@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships and Imaging Member Conflicts.

Date: June 17, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892. 301–435–2598. *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ontology and Database Sharing.

Date: June 17–19, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ping Fan, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892. 301–435–1740. *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alzheimer's Disease Pilot Clinical Trials.

Date: June 17, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Estina E. Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. 301–496–5749. *thompsone@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Interventions for Cancer-Related Fatigue, Rheumatoid Arthritis and Gastrointestinal Symptoms.

Date: June 17, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 3215, MSC 7808, Bethesda, MD 20892. (301) 435–3562. *fosug@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12395 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. NSD–C ARRA Competitive Supplements.

Date: June 9, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont, Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892. (301) 496–0660. *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. NSD–A ARRA Competitive Supplements.

Date: June 24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/ Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–594–0635. *Rc218u@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12392 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; 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 Council on Minority Health and Health Disparities.

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 Council on Minority Health and Health Disparities.

Date: June 23, 2009.

Closed: 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NCMHD Health Disparities update, Scientific Programs Highlight, and other business of the Council.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and, Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892. 301–435–2135. *brooksd@ncmhd.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the

meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12359 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; RIMI (P20) Review Meeting.

Date: June 30–July 1, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Rd., Rockville, MD 20814.

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696, *atreyapr@mail.nih.gov*.

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12358 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited P01 Application.

Date: June 11, 2009.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892. 301–435–3564. *ec17w@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Fungal Diagnostics Review Meeting.

Date: June 18–19, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Chesapeake Suite, Bethesda, MD 20814.

Contact Person: Frank S. DeSilva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–594–1009. *fdesilva@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Infection and Inflammation.

Date: June 25, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–451–2605. *ks216i@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12380 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: June 17, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Katrin Eichelberg, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0818, *keichelberg@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12379 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Conference Grants 2.

Date: July 8, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Steven Birken, PhD, Scientific Review Officer, Office Of Review, National Center For Research Resources, National Institutes of Health, 6701 Democracy Blvd, 10th Fl., Bethesda, MD 20892, (301) 435–1078, *birkens@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12377 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC).

Times and Dates:

8:30 a.m.–5 p.m., June 16, 2009;
8:30 a.m.–3 p.m., June 17, 2009.

Place: Centers for Disease Control and Prevention, Tom Harkin Global Communications Center, 1600 Clifton Road Building 19, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program priorities including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Matters To Be Discussed: The agenda will include discussion and review of the National Cancer Prevention and Control Program highlights; Economic crisis in states and impact on the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and cancer treatment; HPV DNA testing; Integration of Colorectal Cancer screening; Performance based budgeting; Using data to drive program planning; Mammography Use 2000–2006 study results; Non-screening components of NBCCEDP Public Education and Outreach, Coalitions and Partnerships, Quality Assurance and Quality Improvement.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Chastity Walker, Executive Secretary, BCCEDCAC, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop K–57, Chamblee, Georgia 30316, Telephone: 770–488–3013.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 21, 2009.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–12391 Filed 5–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel, Pathogenesis of Preeclampsia.

Date: June 29, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12382 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Review of Competitive Revisions for Training Grant Applications Under the American Recovery and Reinvestment Act (ARRA).

Date: June 10, 2009.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Jeannette F. Korczak, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11820 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Capacity Building Assistance (CBA) To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for High-Risk and/or Racial/Ethnicity Minority Populations, Program Announcement Number PS09–906, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Times, Dates, and Panels:

8:30 a.m.–5 p.m., June 15, 2009 (Closed).
8:30 a.m.–5 p.m., June 16, 2009 (Closed).
8:30 a.m.–5 p.m., June 17, 2009 (Closed).
8:30 a.m.–12 p.m., June 18, 2009 (Closed).

Place: W Hotel Atlanta–Midtown, 188 14th Street, NE., Atlanta, Georgia 30361, Telephone (404) 892–6000.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of ''Capacity Building Assistance (CBA) To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for High-Risk and/or Racial/Ethnicity Minority Populations, PS09–906.''

Contact Person for More Information: Monica Farmer, M.Ed., Public Health Analyst, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop E–60, Atlanta, GA 30333, Telephone: (404) 498–2277.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 19, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–12331 Filed 5–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates:

8 a.m.–6 p.m., June 24, 2009.
8 a.m.–5:45 p.m., June 25, 2009.
8 a.m.–1 p.m., June 26, 2009.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on General Recommendations; Rabies Vaccine; Poliovirus Vaccine; Measles, Mumps and Rubella Vaccine; Pneumococcal Vaccines; Yellow Fever Vaccine; Meningococcal Vaccine; Japanese Encephalitis; MMRV Vaccine Safety; *Haemophilus influenzae b* (Hib) Vaccine; Vaccine Supply; Hepatitis; Human Papillomavirus (HPV) Vaccines; Roles of Pharmacists in Vaccine Administration; Influenza Vaccines; and Novel Influenza A (H1N1).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Antonette Hill, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., (E–05), Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–8905.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and Agency for Toxic Substances and Disease Registry.

Dated: May 19, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–12334 Filed 5–27–09; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NIH State-of-the-Science Conference: Diagnosis and Management of Ductal Carcinoma In Situ (DCIS); Notice

Notice is hereby given of the National Institutes of Health (NIH) State-of-the-Science Conference: Diagnosis and Management of Ductal Carcinoma in Situ (DCIS) to be held September 22–24, 2009, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on September 22 and 23, and at 9 a.m. on September 24, and will be open to the public.

Ductal carcinoma in situ (DCIS) is a condition in which abnormal cells are found in the lining of a breast duct. As *''in situ''* means ''in place,'' this means the abnormal cells have not spread outside the duct to other tissues in the breast. Also referred to as intraductal carcinoma and stage zero breast cancer, DCIS is the most common noninvasive tumor of the breast.

DCIS is most often discovered during routine mammograms, presenting as very small specks of calcium known as microcalcifications. However, not all microcalcifications indicate the presence of DCIS, and the diagnosis must be confirmed by biopsy. Magnetic Resonance Imaging (MRI) has also been used more recently as a diagnostic tool, but questions remain about the impact of the test on patient outcomes. Since the implementation of screening mammography, the rate of new DCIS cases has increased dramatically.

DCIS currently accounts for approximately twenty percent of screening-detected breast cancer, but its true prevalence is challenging to measure because nearly all affected individuals are asymptomatic. By most reports, the risk factors associated with the development of DCIS are similar to those for invasive breast cancer: increased age, family history of breast cancer, previous biopsies, history of hormone replacement therapy, and older age at first childbirth. Tamoxifen, a hormonal drug, has demonstrated a reduction in the incidence of DCIS among high-risk women.

Although the natural course of the disease is not well understood, DCIS can become invasive cancer and spread to other tissues. It is also a marker of increased risk for developing cancer elsewhere in the same or opposite breast. However, not all DCIS will progress to invasive disease, and it is thought that DCIS can be present in some individuals without causing problems over a long period of time. Recent research suggests that DCIS is a spectrum of disease and that certain tumor characteristics may be strong or weak risk factors for subsequent invasive breast cancer. Unfortunately, it is currently not clear which lesion types are more likely to become invasive, leading to difficult treatment decisions for patients and providers.

Because of this uncertainty, DCIS patients are typically treated promptly following diagnosis and have a generally good prognosis. Standard DCIS therapies include breast conservation, with or without radiation or mastectomy, depending on patient and tumor characteristics. Sentinel lymph node biopsy may also be recommended to high-risk patients since this is the area where cancer spread is often first detected. Hormonal therapy may also be used in an effort to prevent DCIS recurrence and to lower the risk of developing invasive breast cancer. However, these drugs' potential side effects must be weighed carefully.

Since the natural course of DCIS is not well understood and treatment benefit may depend on specific tumor and patient characteristics, the treatment of DCIS remains controversial. To examine these important issues, the NIH National Cancer Institute and Office of Medical Applications of Research will convene a State-of-the-Science Conference from September 22–24, 2009. The questions to consider include:

- What are the incidence and prevalence of DCIS and its specific pathologic subtypes, and how are incidence and prevalence influenced by mode of detection, population characteristics, and other risk factors?
- How does the use of MRI or sentinel lymph node biopsy impact important outcomes in patients diagnosed with DCIS?
- How do local control and systemic outcomes vary in DCIS based on tumor and patient characteristics?
- In patients with DCIS, what is the impact of surgery, radiation, and systemic treatment on outcomes?
- What are the most critical research questions for the diagnosis and management of DCIS?

An impartial, independent panel will be charged with reviewing the available published literature in advance of the conference, including a systematic literature review commissioned through the Agency for Healthcare Research and Quality. The first day and a half of the conference will consist of presentations by expert researchers and practitioners and open public discussions. On Thursday, September 24, the panel will present a statement of its collective assessment of the evidence to answer each of the questions above. The panel will also hold a press conference to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later. The primary sponsors of this meeting are the NIH National Cancer Institute and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667 or by sending e-mail to *consensus@mail.nih.gov.* The American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov.*

Please Note: The NIH has instituted security measures to ensure the safety of NIH employees, guests, and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm.*

Dated: May 20, 2009.

Lawrence A. Tabak,

Acting Deputy Director, National Institutes of Health.

[FR Doc. E9–12376 Filed 5–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel Obligated Under the National Health Service Corps Loan Repayment Program (ARRA and FY 2010)

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: Under the American Recovery and Reinvestment Act of 2009 (ARRA), additional funds are available to expand the National Health Service Corps (NHSC) through its programs to provide access to, and improve quality of, primary health care for millions of underserved Americans. The HRSA is

therefore announcing an approximate 16-month funding cycle for new NHSC Loan Repayment applications and awards. During this 16-month cycle, the NHSC Loan Repayment Program will accept applications for loan repayment awards until all funds are expended. The policies described in this notice will be effective for all NHSC loan repayment awards made using ARRA funding from June 2009, to September 30, 2010, and all NHSC loan repayment awards made using fiscal year (FY) 2010 funding (if funding is appropriated) from October 1, 2009, to September 30, 2010. Provisions regarding assignment of NHSC Scholarship Program participants for the upcoming program year will be announced through a subsequent Notice.

The listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of NHSC Loan Repayors (Corps Personnel, Corps members) for this period is posted on the NHSC Web site at *http://nhscjobs.hrsa.gov/.* This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Loan Repayment Program, and Corps members who have become Corps members other than pursuant to contractual obligations under the Loan Repayment Programs. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Office of Shortage Designation, Bureau of Health Professions, HRSA; (2) not deny requested health care services, or discriminate in the provision of services to an individual because the individual is unable to pay for the services or because payment for the services would be made under Medicare, Medicaid, or the Children's Health Insurance Program; (3) enter into an agreement with the State agency that administers Medicaid and the Children's Health Insurance Program, accept assignment under Medicare, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (4) be determined by the Secretary to have (a) a need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there; and (f) demonstrated a willingness to support and facilitate mentorship, professional development and training opportunities for Corps members. Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary medical care, mental health, and/or oral health services to a primary medical care, mental health, or dental HPSA of greatest shortage, respectively; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity. In order for a site to be eligible for placement of NHSC personnel, it must be approved by the NHSC through the successful submission of a Multi-Year Recruitment and Retention (R&R) Assistance Application. The R&R Application approval is good for a period of 3 years from the date of approval.

Entities that receive assignment of Corps personnel must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in full-time clinical practice at the approved service location for a minimum of 40 hours per week with at least 32 hours per week in the ambulatory care setting. Obstetricians/gynecologists, certified nurse midwives (CNMs), and family practitioners who practice obstetrics on a regular basis are required to engage in a minimum of 21 hours per week of outpatient clinical practice. The remaining hours, making up the minimum 40-hour per week total, include delivery and other clinical hospital-based duties. For behavioral and mental health providers, at least 32 hours of the minimum 40 hours per week must be spent providing direct clinical services. At least 21 hours of the 32 clinical hours per week must be spent providing direct patient counseling during normally scheduled office hours in an ambulatory outpatient care setting. For all Corps personnel, (1) time spent on-call does not count toward the 40 hours per week and (2) no more than 8 hours per week can be spent performing practice-related administrative activities. In addition, sites receiving assignment of Corps personnel are expected to (1) report to the NHSC all absences, including those in excess of the authorized number of days (up to 35 work days or 280 hours per service year); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC assignees (including documentation, if applicable, of the reason(s) for the termination of a NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. The UDS allows the site to assess the age, sex, race/ethnicity of, and provider encounter records for its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For assignments made under the NHSC Loan Repayment Program resulting from loan repayment awards made using ARRA funding from June 2009, through September 30, 2010, and loan repayment awards made using FY 2010 funding (if funding is appropriated) from October 1, 2009, to September 30, 2010, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: HPSAs (appropriate to each discipline) with scores of 10 and above are authorized for priority assignment of Corps members who are participating in the Loan Repayment Program. HPSAs with scores below 10 will be eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to those HPSAs receiving priority for placement of Corps members through the Loan Repayment Program (*i.e.,* HPSAs scoring 10 or above). Placements made through the Loan Repayment Program in HPSAs with scores below 10 will be made by decreasing HPSA score, and only to the extent that funding remains available. All sites on the list are eligible sites for ''volunteers''—*i.e.,* individuals wishing to serve in an underserved area but who are not contractually obligated under the NHSC Scholarship or Loan Repayment

Programs. A listing of HPSAs and their scores is posted at *http://hpsafind.hrsa.gov/.*

In order to implement the statutory directive to place NHSC clinicians in the highest need areas and to assure appropriate geographic distribution of NHSC resources, the number of new NHSC placements through the Loan Repayment Program allowed at any one site for the assignments/awards covered by this notice is limited to the following:

HPSA Score: 0–9

Primary Medical Care

No more than 10 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 10 nurse practitioners (NPs), physician assistants (PAs), or CNMs.

Dental

No more than 10 dentists and 10 dental hygienists.

Mental Health

No more than 10 psychiatrists (MD or DO); and no more than a combined total of 10 clinical or counseling psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

HPSA Score: 10–13

Primary Medical Care

No more than 12 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 12 NPs, PAs, or CNMs.

Dental

No more than 12 dentists and 12 dental hygienists.

Mental Health

No more than 12 psychiatrists (MD or DO); and no more than a combined total of 12 clinical or counseling psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

HPSA Score: 14–26

Primary Medical Care

No more than 15 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 15 NPs, PAs, or CNMs.

Dental

No more than 15 dentists and 15 dental hygienists.

Mental Health

No more than 15 psychiatrists (MD or DO); and no more than a combined total of 15 clinical or counseling psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

Application Requests, Dates, and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including those sites whose NHSC 3-year approval has lapsed or whose HPSA designation is withdrawn, will be removed from the priority listing. New entities interested in being added to the high priority list must submit a Multi-Year Recruitment and Retention (R&R) Assistance Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–30, Rockville, MD 20857, fax 301–594–2721. These applications must be postmarked on or before the submission deadline date of March 26, 2010. Due to the availability of additional funds through ARRA, applications submitted by clinicians for loan repayment will be processed as they are received. Therefore, we strongly encourage all sites to have current NHSC-approved R&R applications and vacancies on file. Site applications submitted after this deadline date will be considered for placement on the priority placement list in the following application cycle.

Entities interested in receiving application materials may do so by calling the HRSA call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.hrsa.gov/applications/rraa.asp.*

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of HPSAs and entities that would receive priority in assignment of Corps members, must do so in writing no later than June 29, 2009. This information should be submitted to: Mark Pincus, Director, Division of Site and Clinician Recruitment, Bureau of Clinician Recruitment and Service, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities that are receiving priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Multi-Year R&R Assistance Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230 and expires September 30, 2011.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 22, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9–12531 Filed 5–26–09; 4:15 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Public Comment on Tribal Consultation Sessions

AGENCY: Office of Head Start (OHS), Administration for Children and Families, HHS.

ACTION: Notice of public comment on Tribal Consultation Sessions to be held on July 7, July 21, and July 23, 2009.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, Notice is hereby given of one-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal governments operating Head Start (including Early Head Start) programs. The purpose of the Consultation Sessions is to discuss ways to better meet the needs of Indian, including Alaska Native, children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, Section 640(l)(4)].

Date & Location:

The Consultation Sessions will be held as follows:

July 7, 2009—Denver, Colorado.

July 21, 2009—Kansas City, Missouri.

July 23, 2009—Mystic Lake, Minnesota.

FOR FURTHER INFORMATION CONTACT: Nina McFadden, Regional Program Manager, American Indian/Alaska Native Program Branch, Office of Head Start, email *nina.mcfadden@acf.hhs.gov* or (202) 205–8569. Additional information and online registration are available at *http://www.hsnrc.org.*

Information on Tribal Consultation Sessions in other Regions will be announced once dates and locations are confirmed.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services would like to invite leaders of Tribal governments operating Head Start (including Early Head Start) programs to participate in a formal Consultation Session with OHS leadership. The Consultation Sessions will take place on July 7 in Denver, Colorado; July 21 in Kansas City, Missouri; and July 23 in Mystic Lake (in Prior Lake outside Minneapolis), Minnesota. Hotel and logistical information for the Consultation Sessions is currently being confirmed. This information will be sent to Tribal leaders via email and posted on the Head Start Resource Center Web site, *http://www.hsnrc.org*, as it becomes available.

The purpose of the Consultation Sessions is to solicit input on ways to better meet the needs of Indian, including Alaska Native, children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations.

Tribal leaders and designated representatives interested in submitting topics for a Consultation Session agenda should contact Nina McFadden at *nina.mcfadden@acf.hhs.gov.* The proposal should include a brief description of the topic area along with the name and contact information of the suggested presenter.

The Consultation Sessions will be conducted with elected or appointed leaders of Tribal governments and their designated representatives [42 U.S.C. 9835, Section 640(l)(4)(A)]. Representatives from Tribal organizations and Native non-profit organizations are welcome to attend as observers. Those serving as representatives of a Tribe must have a written letter from the Tribal government authorizing them to serve as the Tribal representative. This should be submitted not less than 3 days in advance of the Consultation Session to Nina McFadden at 202–205–9721 (fax).

A detailed report of each Consultation Session will be prepared and made available within 90 days of the consultation to all Tribal governments receiving funds for Head Start (including Early Head Start) programs. Tribes wishing to submit written testimony for the consultation report should send it to Nina McFadden at *nina.mcfadden@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting. *Please note that only written testimony submitted to OHS will be included in the report, as an appendix.* Testimony and comments made orally will be summarized in the report without attribution, along with topics of concern and recommendations.

Dated: May 21, 2009.

Patricia Brown,

Acting Director, Office of Head Start.

[FR Doc. E9–12396 Filed 5–27–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

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

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
William C. Cain	03126	Laredo.
Robert W. Dugan	11731	New York.
Rasa Szepelak	14316	Chicago.

Dated: May 20, 2009.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E9–12426 Filed 5–27–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
David Cheng	09053	New York.
Christa Ciaccio	09229	New York.
James Cheer	09666	Los Angeles.
Robert H. Chamberlin	06146	Los Angeles.
Lily N. Tsong	13325	Los Angeles.
Gary M. Teller	11855	Atlanta.
Edgar Cook	03771	Portland, Maine.
Alberto del Cerro	04324	Miami.
Philip T. Hill	13123	Miami.
Vision Companies, Inc	23103	Los Angeles.
Vantage International Forwarding, Ltd	92003	Los Angeles.

Dated: May 20, 2009.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E9–12427 Filed 5–27–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0097]

Notice of Availability of Draft Environmental Impact Statement and Announcement of Public Meetings for the Goethals Bridge Replacement Project

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments; notice of public meetings.

SUMMARY: The Coast Guard announces the availability of a Draft Environmental Impact Statement (DEIS) and two public meetings, one in Staten Island, New York (NY) and one in Elizabeth, New Jersey (NJ), on the proposed replacement of the Port Authority of New York and New Jersey's (PANYNJ) Goethals Bridge across the Arthur Kill between Staten Island, NY, and Elizabeth, NJ. We request your comments on the Goethals Bridge Replacement DEIS.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before July 28, 2009 or reach the Docket Management Facility by that date.

Two public meetings will be held, one on Wednesday, July 8, 2009, from 4 p.m. to 8 p.m. and another on Thursday, July 9, from 4 p.m. to 8 p.m. to provide an opportunity for oral comments. Any oral comments provided at the meeting will be transcribed and placed into the docket by the Coast Guard. Please note that the meetings may close early if all business is finished. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting for placement into the docket by the Coast Guard. The comment period for the DEIS closes on July 28, 2009. All comments and related material submitted after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before July 28, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0097 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

The Coast Guard First District Bridge Office at One South Street, Battery Park Building, New York, NY 10004–1466, will maintain a printed copy of the DEIS for public review. The document will be available for inspection or copying at this location between 9 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

The public meeting on Wednesday, July 8, 2009, will be held in the Council Chambers of Elizabeth City Hall, 50 Winfield Scott Plaza Elizabeth, NJ. The public meeting on Thursday, July 9, 2009, will be held in the Harbor Room, Staten Island Hotel, 1415 Richmond Avenue, Staten Island, NY. Please note that the meetings may close early if all business is finished.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice or either of the public meetings, call or e-mail Gary Kassof, Bridge Program Manager, First Coast Guard District, U.S. Coast Guard; telephone 212–668–7165, e-mail *gary.kassof@uscg.mil.* If you have questions regarding viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the Goethals Bridge Replacement DEIS. All comments received, including comments received at the public meetings, will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2009–0097) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0097'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Comments submitted to the docket are a matter of public record and need not be resubmitted at the meetings. Speakers are encouraged to provide written copies of their oral statements to the Coast Guard at the time and place of the meeting. Each written comment should also identify the proposed project including the docket number (USCG–2009–0097), clearly state the reason for any objections, comments or proposed changes to the project and include the name and address of the person or organization submitting the comment. All comments received whether in writing or presented orally at the public meetings, will be fully considered before final agency action is taken on the proposed bridge permit action.

Viewing the comments and the DEIS: To view the comments and the DEIS, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0097 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use

the Docket Management Facility. The DEIS is also available online at *http://www.goethalseis.com/eis/* and is available for inspection at the First Coast Guard District address given under **ADDRESSES**.

Copies of all written communications from the public meetings will be available for review by interested persons after the meetings on the Internet at *http://www.goethalseis.com* as well as on the Federal rulemaking docket at *http://www.regulations.gov.* Transcripts of the meetings will be available for public review approximately 30 days after the meetings. All comments will be made part of the rulemaking docket.

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

Background and Purpose

The PANYNJ, a transportation and development agency in the Port of New York and New Jersey, has proposed replacement of the functionally and physically obsolete Goethals Bridge, which carries I–278 vehicular traffic between Staten Island, NY, and Elizabeth, NJ. Over the past two decades, PANYNJ studies have shown the need to: Address design deficiencies of the existing bridge; provide safer operating conditions and reduce accidents on the bridge; provide for safe and reliable truck access as part of the regional commercial network; reduce life-cycle costs; provide transportation system redundancy; and improve traffic service. The project consists of a new cable-stayed bridge to replace the existing bridge, which is proposed for demolition. The new bridge would consist of six 12-foot travel lanes, three on each roadway deck, inner and outer shoulders, a bikeway/sidewalk and a central area of sufficient width to accommodate the potential for a future transit system.

As a structure over navigable waters of the United States, any replacement bridge requires a U.S. Coast Guard Bridge Permit pursuant to the General Bridge Act of 1946 (Title 33 U.S.C. 525–533). Additionally, the bridge permit would be the major Federal action in this undertaking since Federal funds will not be used, and therefore the Department of Homeland Security, through the United States Coast Guard is the Federal lead agency for review of potential effects on the human environment, including historic properties, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) and the National Historic Preservation Act (NHPA), as amended (16 U.S.C. 470). The Coast Guard has prepared a DEIS. See ''Viewing the comments and DEIS'' above. The DEIS identifies and examines the reasonable alternatives (including No Build) and assesses the potential for impact to the human environment, including historic properties, of the alternative proposals. The DEIS provides an in-depth analysis of four alternative build sites, two north and two south of the existing bridge.

We are requesting your comments on environmental and historic preservation concerns that you may have related to the DEIS. This includes suggesting analyses and methodologies for use in the DEIS or possible sources of data or information not included in the DEIS. Your comments will be considered in preparing the final Environmental Impact Statement.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Gary Kassof, Bridge Program Manager, First Coast Guard District, U.S. Coast Guard; at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Any requests for an oral or sign language interpreter must be received by June 24, 2009.

Public Meeting

The Coast Guard will hold two public meetings regarding the DEIS:

1. On Wednesday, July 8, 2009, from 4 p.m. to 8 p.m. in the Council Chambers of Elizabeth City Hall, 50 Winfield Scott Plaza, Elizabeth, NJ;

2. On Thursday, July 9, 2009, from 4 p.m. to 8 p.m. in the Harbor Room of The Staten Island Hotel, 1415 Richmond Avenue, Staten Island, NY.

The purpose of these meetings is to consider an application by the PANYNJ for Coast Guard approval of the location and plans of a proposed six lane fixed, vehicular bridge across Arthur Kill, mile 11.5 between Staten Island, NY, and Elizabeth, NJ, which would replace the existing Goethals Bridge. All interested parties may present data, views and comments, orally or in writing, concerning the impact of the proposed bridge project on navigation and the human environment. Of particular concern at this time is the impact the proposed action will have on the human environment and historic properties.

The public meetings will be informal. A representative of the Coast Guard will preside, make a brief opening statement and announce the procedure to be followed at the meetings. Attendees who request an opportunity to present oral comments at a public meeting must sign up to speak at the meeting site at the designated time of the meeting. Speakers will be called in the order of receipt of the request. Attendees at the meeting, who wish to present testimony, and have not previously made a request to do so, will follow those having submitted a request, as time permits. All oral presentations will be limited to three minutes. Please note that the meetings may close early if all business is finished.

This notice is issued under authority of the Administrative Procedure Act (5 U.S.C. 553 (c)); the General Bridge Act of 1946 (Title 33 U.S.C. 525–533); and the National Environmental Policy Act of 1969 (Section 102 (2)(c)), as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), Department of Homeland Security Directive 023–01, and Coast Guard Commandant Instruction M16475.1D.

Dated: May 21, 2009.

Hala Elgaaly,

Administrator, Bridge Program, United States Coast Guard.

[FR Doc. E9–12335 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–38]

Mortgagee's Certification of Fees and Escrow and Surety Bond Against Defects Due to Defective Materials and/or Faulty Workmanship

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees provide this information to ensure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the

information in calculating the financial requirement for closing.

DATES: *Comments Due Date:* June 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0468) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgagee's Certification of Fees and Escrow and Surety Bond Against defects Due to Defective Materials and/or Faulty Workmanship.

OMB Approval Number: 2502–0468.

Form Numbers: HUD–2434, HUD–3259.

Description of the Need for the Information and Its Proposed Use:

Mortgagees provide this information to ensure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,000	1		0.75		750

Total Estimated Burden Hours: 750.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12337 Filed 5–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–39]

Mark-to-Market Program: Requirements for Community-Based Non-Profit Organizations and Public Agencies

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Provides proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage debt.

DATES: *Comments Due Date:* June 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0563) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.* , permitting electronic submission of responses.

This Notice Also Lists the Following Information:

Title of Proposal: Mark-to-Market Program: Requirements for Community-Based Non-Profit Organizations and Public Agencies.

OMB Approval Number: 2502–0563.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Provides proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage debt.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	557	1		0.12		70

Total Estimated Burden Hours: 70.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–12339 Filed 5–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R7-SM-2009-N111] [70101-1261-0000-L6]

Proposed Information Collection; OMB Control Number 1018-0075; Federal Subsistence Regulations and Associated Forms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on October 31, 2009. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before July 27, 2009.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Alaska Interest Lands Conservation Act (ANILCA) and Service regulations at 50 CFR 100 require that persons engaged in taking fish, shellfish, and wildlife on public lands in Alaska apply for and obtain a permit to do so and comply with reporting provisions of that permit. Under the current approval for this information collection, we use three forms to collect information from qualified rural residents for subsistence harvest:

(1) FWS Form 3-2326 (Federal Subsistence Hunt Application, Permit, and Report).

(2) FWS Form 3-2327 (Designated Hunter Permit Application, Permit, and Report.

(3) FWS Form 3-2328 (Federal Subsistence Fishing Application, Permit, and Report.

We are proposing to add two new forms:

(1) FWS Form 3-2378 (Designated Fishing Permit Application, Permit, and Report).

(2) FWS Form 3-2379 (Federal Subsistence Customary Trade Recordkeeping Form).

We use the information collected to evaluate:

(1) Subsistence harvest success.

(2) Effectiveness of season lengths, harvest quotas, and harvest restrictions.

(3) Hunting patterns and practices.

(4) Hunter use.

The Federal Subsistence Board uses the harvest data, along with other information, to set future season dates and bag limits for Federal subsistence resource users. These seasons and bag limits are set to meet needs of subsistence hunters without adversely impacting the health of existing animal populations.

During the renewal process for this information, we reviewed our regulations and discovered some information collection requirements not specifically addressed in our previous request for approval. We also collect nonform information on:

(1) Repeal of Federal subsistence rules and regulations (50 CFR 100.14).

(2) Proposed changes to Federal subsistence regulations (50 CFR 100.18).

(3) Special action requests (50 CFR 100.19).

(4) Requests for reconsideration (50 CFR 100.20).

(5) Requests for permits and reports, such as traditional religious/cultural/educational permits; fishwheel permits; fyke net permits; and under ice permits (50 CFR 100.25-27).

Our regulations at 50 CFR 100 contain procedures for the above information collection requirements, including the documentation that must be submitted. The documentation will ensure that we have all of the information necessary to adequately consider requests.

II. Data

OMB Control Number: 1018-0075.

Title: Federal Subsistence Regulations and Associated Forms, 50 CFR 100.

Service Form Number(s): FWS Forms 3-2326, 3-2327, 3-2328, 3-2378, and 3-2379.

Type of Request: Revision of a currently approved collection.

Affected Public: Federally defined rural residents in Alaska.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3-2326 - Hunt Application, Permit, and Report	5,000	5,000	15 minutes	1,250
FWS Form 3-2327 - Designated Hunter Application, Permit, and Report.	450	450	15 minutes	113
FWS Form 3-2328 - Fishing Application, Permit, and Report	250	250	15 minutes	63
FWS Form 3-2378 - Designated Fisher Permit Application, Permit, and Report.	450	450	15 minutes	113
FWS Form 3-2379 - Customary Trade Recordkeeping Form	25	25	15 minutes	6
50 CFR 100.14 - Petition to Repeal Subsistence Rules	1	1	2 hours	2
50 CFR 100.18 - Proposed Changes	75	75	30 minutes	38

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
50 CFR 100.19 - Special Actions Request	25	25	30 minutes	13
50 CFR 100.20 - Requests for Reconsideration	3	3	4 hours	12
50 CFR 100.25-27 - Traditional/Cultural/Educational Permits and Reports.	20	20	30 minutes	10
50 CFR 100.25-27 -Fishwheel, Fyke Net, and Under Ice Permits and Reports.	8	8	15 minutes	2
Totals	6,307	6,307		1,622

III. Request for Comments

We invite comments concerning this IC on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(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.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 20, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E9–12399 Filed 5–27–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2009–N0050; 1265–0000–10137–S3]

Columbia National Wildlife Refuge, Adams and Grant Counties, WA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; announcement of a public open house meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for the Columbia National Wildlife Refuge (refuge) located in Adams and Grant Counties, Washington. We will also prepare an environmental assessment (EA) to evaluate the potential effects of various CCP alternatives. This notice also announces a public open house meeting; see **SUPPLEMENTARY INFORMATION** for the details. We issue this notice in compliance with our CCP policy to advise the public and other agencies of our intentions and to obtain suggestions and information on the scope of issues we will consider during the CCP planning process.

DATES: Please provide written comments by July 13, 2009. A public open house meeting will be held on June 16, 2009. See **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: Additional information concerning the refuge and the CCP is available on the Internet at *http://www.fws.gov/mcriver/*. Send your comments or requests for more information to us as follows:

- Mail: Columbia National Wildlife Refuge Comments, U.S. Fish and Wildlife Service, 64 Maple Street, Burbank, WA 99323.
- Fax: (509) 488–0705.
- E-mail: *mcriver@fws.gov.* Include ''Columbia NWR CCP Scoping Comments'' in the subject line of the message. If you would like to be added to the refuge's CCP mailing list, please include your mailing address and specify whether you want to receive a hard copy or CD–ROM of the draft and final plans.

FOR FURTHER INFORMATION CONTACT: Randy Hill, Columbia National Wildlife Refuge, telephone (509) 488–2668.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System (Refuge System) Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires us to develop a CCP for each national wildlife refuge and to update it every 15 years. The purpose of developing a CCP is to provide refuge managers a 15-year strategy for achieving refuge purposes and contributing toward the mission of the Refuge System consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction for conserving refuge wildlife and habitats, we also identify wildlife-dependent recreational opportunities available to the public that are compatible with the refuge's establishing purposes and the mission of the Refuge System. These opportunities include hunting, fishing, wildlife observation and photography, environmental education and interpretation.

We will prepare an EA in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Each unit of the Refuge System is established to fulfill specific purposes. We use these purposes to develop and prioritize management goals and objectives within the Refuge System mission and to guide which public uses will occur on a refuge.

Public Involvement

As part of the CCP planning process, we will provide opportunities for the public, refuge neighbors, interested individuals and organizations, Tribes, elected officials, and local, State, and Federal government and nongovernment stakeholders and partners to participate in our planning process. At this time, we are requesting input in the form of issues, concerns, ideas and suggestions for the future management of the Columbia Refuge.

Information About CCPs

During the CCP planning process, we will consider many elements of refuge management, including wildlife, habitat, and visitor services management. Public input during the planning process is essential. The CCP will describe the refuge purposes and desired conditions for the refuge and the long-term conservation goals, objectives and strategies for fulfilling refuge purposes and achieving desired conditions.

Refuge Overview

Columbia Refuge was established ''as a refuge and breeding ground for migratory birds and other wildlife,'' and ''for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' It fills an important role in the management of mallard, northern pintail, and lesser Canada goose populations during migration and wintering periods, and is the primary migratory stopover area for the Pacific Coast population of the lesser sandhill crane. The refuge covers almost 30,000 acres in the arid Columbia Basin of south-central Washington State straddling Crab Creek, between Potholes Reservoir and the Columbia River in both Grant and Adams Counties. The refuge is divided into six management units primarily arranged according to land type. Most of the refuge is within the Drumheller Channels National Natural Landmark. It is also located along the Pacific Flyway and has become a particularly important stop-over and wintering ground for migratory birds and waterfowl. In addition, cackling geese, sandhill cranes, and neotropical birds consume the refuge's grain crops. Birds of prey, such as red-tailed hawks, hunt for rodents and other small mammals living in the refuge's agricultural fields.

Various visitor services and activities take place on the refuge, including hiking, boating, fishing, hunting, wildlife observation and photography, nature and cultural resources interpretation, and environmental education.

Preliminary Issues and Concerns

We have identified the following preliminary issues, concerns, and opportunities that we may address in the CCP. We may identify additional issues during public scoping.

- How can we best protect and restore populations of priority species on the refuge?
- How can we best achieve optimal habitat conditions on the refuge for priority species?
- How can we protect refuge habitats from invasive species, wildfire risks, over-grazing, vandalism, and other disturbances and threats, and restore habitat values?
- Which compatible wildlife-dependent recreation opportunities on the refuge should be expanded, developed, or modified?
- What are the refuge's land acquisition priorities within its approved boundary, and should boundary expansion be considered?
- How can we meet refuge staffing needs?

Public Open House Meeting

A public open house meeting will be held on June 16, 2009, from 5:30 p.m. to 8 p.m. in the City of Othello's Municipal Building (City Hall), City Council Chambers, 500 East Main Street, Othello, WA 99344, to provide information on the CCP and receive public comments. Opportunities for public input will be announced throughout the CCP planning process.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All comments and materials we receive from individuals on our NEPA documents become part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA, and Department of the Interior and Service policies and procedures.

Dated: May 19, 2009.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E9–12390 Filed 5–27–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N0075; 40136–1265–0000–S3]

Mandalay National Wildlife Refuge, Terrebonne Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Mandalay National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 29, 2009.

ADDRESSES: Send comments, questions, and requests for information to: Mr. Paul Yakupzack, Refuge Manager, Mandalay NWR, 3599 Bayou Black Drive, Houma, LA 70360. The Draft CCP/EA is available on compact disk or in hard copy. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet Site: *http://southeast.fws.gov/planning/.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Yakupzack; telephone: 985/853–1078; fax: 985/853–1079; e-mail: *paul_yakupzack@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Mandalay NWR. We started this process through a notice in the **Federal Register** on March 19, 2007 (72 FR 12811).

Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least

every 15 years in accordance with the Improvement Act.

Mandalay NWR, approximately 5 miles west of Houma, Louisiana, was established on May 2, 1996, with the purchase of 4,416 acres under the authority of the Migratory Bird Conservation Act of 1929 and the Endangered Species Act of 1973. The refuge, predominantly freshwater marsh and cypress-tupelo swamp, provides excellent habitat for waterfowl, wading birds, and neotropical songbirds. Access is by boat, except for the headquarters building on Highway 182 (Bayou Black Drive) and a nearby nature trail. Mandalay NWR is administered as one of eight refuges of the Southeast Louisiana NWR Complex, headquartered in Lacombe, Louisiana.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative B as the proposed alternative. A full description is in the Draft CCP/EA. We summarize each alternative below.

Alternative A—No Action Alternative

Under this alternative, no new actions would be taken to improve or enhance the refuge's current habitat, wildlife, and public use management programs. Species of Federal responsibility, such as threatened and endangered species and migratory birds, would continue to be monitored at present levels. Additional species monitoring would occur through the use of volunteers as they become available. Current programs of marsh management would be maintained. No progressive wetland restoration projects would be implemented. All public use programs of fishing, hunting, wildlife observation, wildlife photography, and environmental education and interpretation would continue at present levels and with current facilities.

Acquisition of lands into the refuge would occur when funding is appropriated and willing sellers offer land that is quality waterfowl habitat. Staff would consist of a manager and a biologist for both Mandalay NWR and Bayou Teche NWR, along with supplementary support from the Southeast Louisiana NWR Complex staff when needed. The refuge headquarters would serve as an administrative office, with no enhancement of the grounds for public use.

Alternative B—Natural Resource Management (Proposed Alternative)

Alternative B would emphasize management of the natural resources of Mandalay NWR based on maintaining and improving wetland habitats, monitoring targeted flora and fauna representative of the Terrebonne Basin, and providing quality public use programs and wildlife-dependent recreational activities. All species occurring on the refuge would be considered and certain targeted species would be managed and monitored, in addition to species of Federal responsibility. These species would be chosen based on the criteria that they would be indicators of the health of important habitat or species of concern.

Wetland loss would be documented and, whenever possible, the lost wetlands would be restored. Public use programs would be improved by offering more facilities and wildlife observation areas. Public use facilities would undergo annual reviews for maintenance needs and safety concerns. Overall public use would be monitored to determine if any uses would negatively impact refuge resources. Education programs would be reviewed and improved to complement current refuge management and staffing. Archaeological resources would be surveyed.

Land acquisition within the approved acquisition boundary would be based on importance of the habitat for target management species. The refuge headquarters would house a small administrative office. The staff would offer interpretation of refuge wildlife and habitats, as well as demonstrate habitat improvements for individual landowners. The main interpretive facilities would be housed at the Southeast Louisiana NWR Complex Headquarters in Lacombe, Louisiana.

In general, under Alternative B, management decisions and actions would support wildlife species and habitats occurring on the refuge based on well-planned strategies and sound scientific judgment. Quality wildlife-dependent recreational uses and environmental education and interpretation programs would be offered to support and explain the natural resources of the refuge.

Alternative C—Maximized Public Use

Alternative C would emphasize managing the natural resources of Mandalay NWR for maximized public use activities. The majority of staff time and efforts would support hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. Federal trust species and archaeological resources would be monitored as mandated.

All refuge programs for conservation of wildlife and habitats, such as monitoring, surveying, and managing marsh, would support species and resources of importance for public use. More emphasis would be placed on interpreting and demonstrating these programs. Access, through means such as trails for walking and dredged areas for boat access, would be maximized, and we would provide public use facilities throughout the refuge.

Land acquisition within the approved acquisition boundary would be based on importance of the habitat for public use. The refuge headquarters would provide a small administrative office and a visitor center, which would be developed for public use activities.

In general, Alternative C would focus on expanding public use activities to the fullest extent possible and conducting only mandated resource protection.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 21, 2009.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. E9–12389 Filed 5–27–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–05–1320–EL; COC–70615]

Notice of Public Meeting, To Receive for Comments on an Environmental Analysis, Finding of No Significant Impact, Maximum Economic Recovery Report, and Fair Market Value for Coal Lease Application COC–70615

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, hereby gives notice that the public meeting will be held to receive comments on the Environmental Analysis (EA), Finding of No Significant Impact (FONSI), Maximum Economic Recovery (MER), and Fair Market Value (FMV) of federal coal to be offered for a competitive lease sale. Coal Lease By Application (LBA) COC–70615 was filed by Oxbow Mining, LLC. The BLM plans to offer for competitive lease 789.79 acres of Federal coal in Gunnison County, Colorado.

DATES: The public meeting will be held at 7 p.m., Wednesday, July 8, 2009. Written comments should be received no later than July 22, 2009.

ADDRESSES: The public meeting will be held in the Paonia Town Hall located at 214 Grand Avenue, Paonia, Colorado. Written comments should be addressed to the Uncompahgre Field Office Manager, Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Uncompahgre Field Office at the address above, or by telephone at 970–240–5300.

SUPPLEMENTARY INFORMATION: BLM hereby gives notice that a public meeting will be held on Wednesday, July 8, 2009, at 7 p.m., at the Paonia Town Hall at the address given above. An LBA was filed by Oxbow Mining, LLC. The BLM offers for competitive lease federal coal in the lands outside established coal production regions described as:

T. 13 S., R. 90 NW., 6th P.M., Sections 3, 4, 5, more particularly described as follows:

Beginning at a point on the North Section line at the Section Corner common to Sections 4 and 5; thence S. 87°22′08″ E. 5765.75 feet; thence S. 87°32′05″ E. 1604.94 feet; thence S. 0°04′31″ W. 4246.44 feet; thence N. 86°45′23″ W. 1558.38 feet; thence N. 84°12′17″ W. 5148.60 feet; thence N. 86°44′37″ W. 1321.91 feet; to the existing lease line for Coal lease COC–61357; thence along said existing lease line N. 10°00′13″ W. 1382.68 feet; thence N. 86°08′20″ W. 390.65 feet; thence N. 00°1135.85 feet; to the southeasterly boundary of Tract 4; thence N. 14°36′45″ E. 1463.19 feet; along said southeasterly boundary of Tract 4; thence S. 87°18′59″ E. 902.22 feet; along the north section line of section 5 to the Point of beginning.

Containing approximately 789.79 acres in Gunnison County, Colorado.

The coal resource to be offered is limited to coal recoverable by underground mining methods. One purpose of the meeting is to obtain public comments on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

(4) EA and the FONSI.

In addition, the public is invited to submit written comments concerning the MER and FMV of the coal resource. Public comments will be utilized in establishing FMV for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.
2. The price that the mined coal would bring in the market place.
3. The cost of producing the coal.
4. The interest rate at which anticipated income streams would be discounted.
5. Depreciation and other accounting factors.
6. The mining method or methods which would achieve maximum economic recovery of the coal.
7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and
8. Any comparable sales data of similar coal lands in the lease area.

Written requests to testify orally at the July 8, 2009, public meeting should be received at the Uncompahgre Field Office prior to the close of business July 8, 2009. Those who indicate they wish to testify when they register at the meeting may have an opportunity if time is available. If any information submitted as comments are considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the MER, and FMV should be sent to the Uncompahgre Field Office at the above address prior to the close of business on July 22, 2009, the end of the 30 day public comment period.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. The MER Report is available from the Uncompahgre Field Office upon request. A copy of the MER Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection after July 22, 2009, at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 21, 2009.

Kurt M. Barton,

Solid Minerals LLE, Division of Energy, Lands and Minerals.

[FR Doc. E9–12333 Filed 5–27–09; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–605]

In the Matter of Certain Semiconductor Chips With Minimized Chip Package Size and Products Containing Same; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of 19 U.S.C. 1337 by Spansion, Inc. and Spansion, LLC, both of Sunnyvale, California (collectively ''Spansion''); QUALCOMM, Inc. of San Diego, California (''Qualcomm''); ATI Technologies of Thornhill, Ontario, Canada (''ATI''); Motorola, Inc. of Schaumburg, Illinois (''Motorola''); STMicroelectronics N.V. of Geneva, Switzerland (''ST–NV''); and Freescale Semiconductor, Inc. of Austin, Texas (''Freescale'') (collectively, ''Respondents'') in the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)

708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 21, 2007, based on a complaint filed by Tessera against Spansion, Qualcomm, ATI, Motorola, ST–NV, and Freescale. 72 FR 28522 (May 21, 2007). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor chips with minimized chip package size or products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 5,852,326, and 6,433,419.

On December 1, 2008, the presiding administrative law judge (''ALJ'') issued his final ID finding no violation of Section 337 by Respondents. The ID included the ALJ's recommended determination (''RD'') on remedy and bonding. In his ID, the ALJ found that Respondents' accused products do not infringe the asserted claims the '326 patent or the asserted claims of the '419 patent. The ALJ additionally found that the asserted claims of the '326 and '419 patents are not invalid for failing to satisfy the enablement requirement or the written description requirement of 35 U.S.C. 112 ¶ 1. The ALJ further found that the asserted claims of the '326 and '419 patents are not invalid as indefinite of 35 U.S.C. 112 ¶ 2. The ALJ also found that the asserted claims of the '326 and '419 patents are not invalid under 35 U.S.C. § 102 for anticipation or under 35 U.S.C. 103 for obviousness. Finally, the ALJ found that an industry in the United States exists with respect to the '326 and '419 patents as required by 19 U.S.C. 1337(a)(2) and (3). In his RD, the ALJ recommended that, should the Commission determine that a violation exists, a limited exclusion order (''LEO'') would be properly directed to Respondents' accused chip packages and to the downstream products of Motorola, a named respondent.

On December 15, 2008, Tessera and the Commission investigative attorney (''IA'') filed separate petitions seeking review of the ALJ's determination concerning non-infringement of the asserted claims of the '326 and '419 patents. Also on December 15, 2008, Respondents filed various contingent petitions seeking review of certain aspects of the ALJ's findings as concern both the '326 and '419 patents in the event that the Commission determined to review the ID's findings concerning non-infringement. On December 23, 2008, Respondents filed an opposition to Tessera's and the IA's petitions for review, and Tessera and the IA filed separate responses to Respondents' various contingent petitions for review.

On January 30, 2009, the Commission determined to review the final ID in part and requested briefing on the issues it determined to review, remedy, the public interest, and bonding. 74 FR 6175–6 (Feb. 5, 2009). The Commission determined to review: (1) The ALJ's finding that Respondents' accused devices do not infringe the asserted claims the '326 and '419 patents; (2) the ALJ's finding that Tessera has waived any argument that the accused products indirectly infringe the '419 patent; (3) the ALJ's finding that Motorola's invention of the 1989 68HC11 OMPAC chip (''OMPAC'') does not anticipate the asserted patents under 35 U.S.C. 102(b); and (4) the ALJ's finding that the Motorola's OMPAC invention does not anticipate the asserted patents under 35 U.S.C. 102(g). Id. The Commission determined not to review the remaining issues decided in the ID. On February 6, 2009, Respondents filed a motion to extend the briefing schedule. On February 10, 2009, the Commission issued a Notice extending the deadline for receiving initial submissions and reply submissions in light of the fact that the ALJ did not issue the public version of the final ID until February 9, 2009. The Commission also extended the target date to April 14, 2009. The Commission issued a corrected version of the Notice on February 18, 2009, clarifying the deadline for reply submissions of issues relating to violation of Section 337.

On February 23, 2009, the parties filed initial written submissions regarding the issues on review, remedy, the public interest, and bonding. On March 5, 2009, the parties filed response submissions. Several respondents (''the 649 Respondents) in co-pending investigation *Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, Inv. No. 337–TA–649 (''the 649 Investigation''), also filed reply briefs on remedy, the public interest, and bonding. In its initial submission on remedy, Tessera requested that the Commission issue a ''tailored'' general exclusion order (''GEO'') should the Commission determine that there is a violation of Section 337. Tessera also requested that, should the Commission determine that the current record is not adequate to support issuance of a GEO, the Commission should issue the LEO recommended by the ALJ immediately, and then conduct further proceedings regarding the availability of a tailored GEO. The IA concurred. Respondents in this investigation and the 649 Respondents opposed Tessera's request for a ''tailored'' GEO. On March 9, 2009, Siliconware Precision Industries Co., Ltd. and Siliconware U.S.A., Inc. (collectively ''SPIL Respondents''), who are respondents in the 649 Investigation, filed a motion to extend the date for filing reply submissions to the Commission's Notice of Review of the final ID and to compel the production of Tessera's initial confidential briefing in response to the Commission's Notice.

In support its February 23, 2009, brief on Remedy, the Public Interest and Bonding, Tessera submitted an affidavit from Dr. Stephen Prowse and a statement from Mr. Bernard Cassidy. On March 5, 2009, Respondents filed a motion to strike Dr. Prowse's affidavit and Mr. Cassidy's statement. On March 16, 2009, the IA filed a response in support of Respondents' Motion to Strike.

On March 11, 2009, Spansion filed a Notice of Commencement of Bankruptcy Proceedings and of Automatic Stay, requesting a stay of the investigation because it and certain of its subsidiaries had filed for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.* Tessera filed an opposition to Spansion's request on March 18, 2009, and the IA filed an opposition on March 23, 2009.

On March 26, 2009, the Commission issued a Notice requesting additional briefing on remedy and extending the target date. 74 FR 14820–1 (April 1, 2009). In the Notice, the Commission asked the parties and any interested non-parties to address whether Tessera is entitled to a GEO under 19 U.S.C. 1337(d)(2), whether the Commission has the authority to issue a ''tailored'' GEO, which would ostensibly reach only specified downstream products, and whether the Commission has the authority to issue an LEO immediately and then issue a GEO at a later date

when the Commission concludes the investigation. On April 10, 2009, Tessera, the IA, Respondents, and several interested non-parties filed initial written submissions in response to the Commission's request for additional briefing on remedy. Respondent Spansion did not submit any briefing in response to the Commission's request. On April 20, 2009, Tessera, the IA, Respondents, and the SPIL Respondents filed reply submissions in response to the Commission's request for additional briefing on remedy. On April 20, 2009, the Commission issued a Notice in response to a motion from Broadcom extending the due date for reply submissions from interested non-parties to April 29, 2009, since the public versions of the parties' initial submissions were not due to be filed until April 22, 2009. Notice of Commission Determination to Extend the Deadline for Receiving Reply Submission from Interested Parties in Response to the Commission's Request for Additional Briefing on Remedy (April 20, 2009). On April 29, 2009, the interested non-parties submitted their reply briefs.

On April 24, 2009, respondent Qualcomm filed a motion for leave to file a petition for reconsideration pursuant to 19 CFR 210.47 of the Commission's determination not to review the ID's finding that the asserted claims of the patents-in-suit are not indefinite. Qualcomm argued that the United States Patent and Trademark Office rejected as ''indefinite'' under 35 U.S.C. 112, ¶ 2, new claims submitted by Tessera in connection with the reexamination of U.S. Patent No. 6,133,627, one of the parent patents of the '419 patent. Tessera filed an opposition to Qualcomm's motion on April 30, 2009. The IA filed an opposition on May 4, 2009. Qualcomm filed a reply to Tessera's and the IA's oppositions on May 5, 2009.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to reverse the ID's determination of no violation of the '326 patent and '419 patent. Specifically, the Commission reverses the ID's finding that Respondents' accused devices do not infringe asserted claims 1, 2, 6, 12, 16–19, 21, 24–26, and 29 of the '326 patent and asserted claims 1–11, 14, 15, 19, and 22–24 of the '419 patent. The Commission further reverses the ID's conclusion regarding waiver with respect to any claims that the accused chip packages indirectly infringe the asserted claims of the '419 patent. Moreover, the Commission finds that Respondents have contributorily infringed the asserted claims of the '419 patent. The Commission also modifies the ID's analysis concerning its finding that the '326 and '419 patents are not invalid under 35 U.S.C. 102(b) to clarify that the statute requires comparing the on-sale date of alleged prior art against the priority date of the asserted patents, not against the conception date of the asserted patents.

The Commission has determined that the appropriate form of relief is (1) a limited exclusion order under 19 U.S.C. 1337(d)(1) prohibiting the unlicensed entry of semiconductor chips with minimized chip package size and products incorporating these chips that infringe one or more of claims 1, 2, 6, 12, 16–19, 21, 24–26, and 29 of the '326 patent and claims 1–11, 14, 15, 19, and 22–24 of the '419 patent, and are manufactured abroad by or on behalf of, or imported by or on behalf of, Spansion, Qualcomm, ATI, Motorola, ST–NV, and Freescale; and (2) cease and desist orders directed to Motorola, Qualcomm, Freescale, and Spansion.

The Commission has further determined that the public interest factors enumerated in Section 337(d) and (f) (19 U.S.C. 1337(d), (f)) do not preclude issuance of the limited exclusion order and the cease and desist orders. The Commission has determined that the bond for temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) shall be in the amount of 3.5% of the value of the imported articles that are subject to the order. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

Additionally, the Commission denies the motion by the SPIL Respondents to extend the date for reply submissions to the Commission's Notice of Review of the final ID and to compel the production of Tessera's initial confidential briefing in response to the Commission's Notice of Review. The Commission further denies Spansion's motion for a stay of the investigation in light of the commencement of bankruptcy proceedings involving it. The Commission also denies respondent Qualcomm's motion for leave to file a petition for reconsideration of the Commission's determination not to review the ID's finding that the asserted claims of the patents-in-suit are not indefinite. Finally, the Commission denies Respondents' motion to strike the Prowse Affidavit and the Cassidy Statement.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–50).

Issued: May 20, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–12371 Filed 5–27–09; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (09–044)]

Notice of Centennial Challenges—2009 Power Beaming Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges—2009 Power Beaming Challenge.

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2459f–1(d). This is an update to a previous notice (09–12) on the 2009 Power Beaming and Tether Challenges. The 2009 Power Beaming Challenge is now scheduled and teams that wish to compete may register. A notice on the Tether Challenge will be issued at a later time. The NASA Centennial Challenges is a program of prize contests to stimulate innovation and competition in technologies of interest and value to NASA and the nation. The 2009 Power Beaming Challenge is a prize competition designed to promote the development of new power transmission technologies with applications in energy systems, transportation and emergency operations. Significant improvements in power beaming could contribute to revolutionary advances in space transportation as well as other areas.

The Spaceward Foundation administers the Power Beaming Challenge for NASA. The prize purse is funded by NASA.

DATES: The 2009 Power Beaming Challenge will be held on July 14–16, 2009.

Location: The 2009 Power Beaming Challenge will be held at the Dryden Flight Research Center, Edwards, California.

FOR FURTHER INFORMATION CONTACT: To register for and get additional information regarding the 2009 Power Beaming Challenge including rules, team agreements, eligibility and prize criteria, visit: *http://www.spaceward.org* or contact Mr. Ben Shelef at the

Spaceward Foundation, 725 N Shoreline Blvd., Mountain View, CA 94043, Phone: 650–965–2900. Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Andrew Petro, NASA Headquarters, Suite 6J79, 300 E Street, SW., Washington, DC 20546, Phone: 202–358–0310. The Centennial Challenges Web site is *http://www.ip.nasa.gov/cc.*

SUPPLEMENTARY INFORMATION: The maximum prize purse available for the 2009 Power Beaming Challenge is $2,000,000. Each climber, powered by beamed energy, must climb to a height of one kilometer traveling at a minimum speed. The teams with the highest score (the product of average velocity and payload mass normalized by the climber mass) will win the competition.

In the case of individuals, prizes can only be awarded to U.S. citizens or permanent residents and in the case of corporations or other entities, prizes can only be awarded to those that are incorporated in and maintain a primary place of business in the United States.

Dated: May 20, 2009.

Douglas A. Comstock,

Director, Innovative Partnerships Program.

[FR Doc. E9–12315 Filed 5–27–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0217; Docket No. 030–35868]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Nuclear Materials License No. 06–30693–01, for Termination of the License and Unrestricted Release of the Protometrix—an Invitrogen Company Facility in Branford, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment and Termination.

FOR FURTHER INFORMATION CONTACT: Thomas K. Thompson, Sr. Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5303; fax number (610) 337–5269; or by e-mail: *Thomas.Thompson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment terminating Byproduct Materials License No. 06–30693–01. This license is held by Protometrix—an Invitrogen Company (the Licensee), for its facility located at 688 East Main Street, Branford, Connecticut (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and terminate the NRC license. The Licensee requested this action in a letter dated March 12, 2009. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, *Code of Federal Regulations* (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee, and the license will be terminated, following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's March 12, 2009, license amendment and termination request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 06–30693–01 was issued on November 19, 2001, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorizes the Licensee to use hydrogen-3, carbon-14, phosphorus-32, phosphorus-33, sulfur-35, and iodine 125 for conducting research and development.

The Facility is a one story building of approximately 13,787 square feet, consisting of warehouse spaces, office spaces, and laboratories. Within the Facility, use of licensed materials was largely confined to two small laboratories with a total area of approximately 330 square feet. The Facility is located in an industrial area. Within the Facility, the radionuclides of concern were hydrogen-3 and carbon-14 because the half-life of these isotopes is greater than 120 days.

In January 2009, the Licensee last handled byproduct materials, ceased licensed activities, and initiated a survey of the affected areas of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with the NRC-approved operating radiation safety procedures, would be required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with a half-life greater than 120 days: hydrogen-3 and carbon-14.

The Licensee conducted a final status survey in January 2009. This survey covered the areas of use in the Facility. The final status survey report was received March 12, 2009. The Licensee demonstrated compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated Decommissioning Guidance,'' Volume 2. The radionuclide-specific derived concentration guideline levels (DCGLs), developed by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological

Criteria for License Termination of NRC-Licensed Nuclear Facilities'' Volumes 1–3 (NUREG–1496) (ADAMS Accession Nos. ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment and termination request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirms that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment and termination request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is, accordingly, not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of Connecticut, Department of Environmental Protection, Division of Radiation, for review on April 9, 2009. The State replied by electronic mail on April 17, 2009, indicating they agreed with the conclusions of the Environmental Assessment.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and termination and supporting documentation, 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. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NRC License No. 06–30693–01 Amendment 05 issued January 15, 2009 (ADAMS Accession No. ML013270325);
2. Termination request dated March 12, 2009 (ADAMS Accession No. ML090780841);
3. Additional information on termination request dated March 20, 2009 (ADAMS Accession No. ML090970767);
4. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2;
5. Title 10, Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination'';
6. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions'';
7. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' Volumes 1–3.

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@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at 475 Allendale Road, King of Prussia, PA this 19th day of May 2009.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial & R&D, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–12402 Filed 5–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on ESBWR; Notice of Meeting

The ACRS Subcommittee on the Economic Simplified Boiling Water Reactor (ESBWR) will hold a meeting on June 17–18, 2009, 11545 Rockville Pike, Room T2–B3 Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric—Hitachi Nuclear Americas, LLC (GEH) and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, June 17, 2009–8:30 a.m.–5 p.m.

Thursday, June 18, 2009–8:30 a.m.–5 p.m.

The Subcommittee will review the resolution of Open Items associated with ESBWR design certification related to containment issues and review the Safety Evaluation Report with Open Items associated with the North Anna Combined License Application referencing the ESBWR design. The Subcommittee will hear presentations

by and hold discussions with representatives of the NRC staff, GEH, Dominion, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Christopher Brown, (Telephone: 301–415–7111) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 22, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–12384 Filed 5–27–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold Closed Meetings on Wednesday, May 27, 2009 at 1 p.m. and Thursday, May 28, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Casey, as duty officer, voted to consider the item listed for the Closed Meetings in closed sessions, and determined that no earlier notice of the May 27, 2009 Closed Meeting was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, May 27, 2009 will be: Institution and settlement of injunctive actions; and other matters related to enforcement proceedings.

The subject matter of the Closed Meeting scheduled for Thursday, May 28, 2009 will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; an opinion; and other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: May 21, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–12347 Filed 5–27–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59946; File No. SR–FINRA–2009–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to FINRA Rule 2360 (Options) Regarding Position Limits for Options on Exchange-Traded Funds and Registration Qualifications With Respect to Options Discretionary Accounts

May 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds, (2) clarify the application of position limits to conventional options on exchange-traded funds, and (3) clarify the appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 proposed rule change would add Supplementary Material to FINRA Rule 2360 (Options) to (1) establish higher position limits for options on selected exchange-traded funds (''ETFs'') and (2) clarify the application of position limits to conventional options on ETFs. In addition, the proposed rule change would amend FINRA Rule 2360(b)(18) to clarify the appropriate registration qualifications for accepting and reviewing the acceptance of options discretionary accounts.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

Options on ETFs. FINRA Rule 2360(b)(3) subjects standardized and conventional options [4] to one of five different position limits with the maximum limit of 250,000 contracts. FINRA's position limits are consistent with those of the Options Exchanges.[5] The Options Exchanges, however, have Supplementary Material that designates higher position limits for options on selected ETFs. The position limit for options on The DIAMONDS Trust (DIA) and the Standard and Poor's Depositary Receipts Trust (SPY) is 300,000 contracts. The position limit for options on The iShares Russell 2000 Index Fund (IWM) is 500,000 contracts, and the position limit for options on The PowerShares QQQ Trust (QQQQ) is 900,000 contracts. FINRA proposes, in accordance with Rule 2360(b)(3)(A)(vi), to establish the same position limits on such options to ensure consistency with rules of the Options Exchanges.

In addition, FINRA proposes to clarify that the position limits for conventional options on ETFs should be the same as position limits for other equity securities. Thus, if an ETF underlying a conventional option also underlies a standardized option, then the position limit on the conventional ETF option shall be the same as the position limit for the standardized ETF option.[6] However, if an ETF underlying a conventional option does not also underlie a standardized option, then the position limit for the conventional ETF option shall be the basic limit of 25,000 contracts.[7] In order for such a conventional ETF option to qualify for a position limit greater than 25,000 contracts, a member must apply for an increased position limit in accordance with FINRA Rule 2360(b)(3)(A)(viii)b by first demonstrating to FINRA's Market Regulation Department that the underlying ETF security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Options Discretionary Accounts. On November 12, 2008, the SEC approved SR–FINRA–2008–032 (the ''Options Transfer Filing''), which adopted NASD Rules 2840 through 2853 regarding Trading in Index Warrants, Currency Index Warrants and Currency Warrants, 2860 (Options), and 2865 (Security Futures) as FINRA Rules in the consolidated FINRA rulebook.[8] The Options Transfer Filing renumbered NASD Rules 2840 through 2853 as FINRA Rules 2350 through 2359, NASD Rule 2860 as FINRA Rule 2360 and NASD Rule 2865 as FINRA Rule 2370 in the consolidated FINRA rulebook. The FINRA rules became effective on February 17, 2009.[9]

In response to a comment letter to the Options Transfer Filing,[10] FINRA proposed in Amendment No. 1, consistent with the rules of the Chicago Board Options Exchange (''CBOE''), to amend FINRA Rule 2360(b)(18) to permit greater flexibility and allow a Limited Principal-General Securities Sales Supervisor (''LP–GSSS'') (Series 9/10) in addition to a Registered Options Principal (''ROP'') (Series 4) to accept an options discretionary account.[11] Also, consistent with the CBOE provision, FINRA retained the requirement that the review of the acceptance of a discretionary options account may only be performed by a ROP (Series 4).[12] FINRA proposes to amend FINRA Rule 2360(b)(18)(A)(i)b and (b)(18)(A)(ii) to ensure that the rule text more clearly reflects the policy approved in the Options Transfer Filing that either a ROP (Series 4) or a LP–GSSS (Series 9/10) may accept an options discretionary account, but that the review of the acceptance must be performed by a ROP (Series 4).

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change regarding options on ETFs will promote consistent regulation by harmonizing FINRA's position limits for options on ETFs with those of the Options Exchanges and clarifying the applicable position limits for conventional options on ETFs. In addition, FINRA believes that the proposed rule change regarding options discretionary accounts will clarify the appropriate registration qualifications that are required to approve and review the approval of such accounts.

B. Self-Regulatory Organization's Statement of Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the

[4] A ''conventional option'' is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. *See* FINRA Rule 2360(a)(9). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security.

[5] *See* Rule 4.11 of the CBOE; Rule 412 of the ISE; Rule 1001 of NASDAQ OMX PHLX; Rule 904 of NYSE AMEX; Rule 6.8 of NYSE Arca; and Chapter III Section 7 of the BOX (collectively referred to as the ''Options Exchanges''). The Commission notes that the NASDAQ Options Market (''NOM'') also is an options exchange that has position limit rules that are consistent with the Options Exchanges. *See* Chapter III, Section 7 of the NOM rules.

[6] Since 1999, FINRA has maintained position limit parity between conventional and standardized options on the same security. *See* Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999). Prior to 1999, position limits on conventional options were three times greater than the limits for standardized options. *See* Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

[7] *See* FINRA Rule 2360(b)(3)(A)(viii)a.1. Conventional options are generally subject to a position limit equal to the greater of (i) the basic limit of 25,000 contracts or (ii) any standardized option position limit as set forth in Rule 2360(b)(3)(A)(ii) through (v) (i.e., 50,000 to 250,000 contracts) for which the underlying security qualifies.

[8] *See* Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1; File No. SR–FINRA 2008–032).

[9] *See Regulatory Notice* 08–78 (December 2008) (SEC Approves New Consolidated FINRA Rules).

[10] *See* Letter from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association, to Florence E. Harmon, Acting Secretary, SEC, dated September 4, 2008.

[11] *See* CBOE Rule 9.2.01 specifying that Options Principals are qualified by passing either the Series 4 or the Series 9/10 and CBOE Rule 9.2.02 specifying that the review of the acceptance of a discretionary account must be performed by a Series 4 qualified individual.

[12] FINRA would leave unchanged the requirement that ''frequent supervisory review by a ROP who is not exercising the discretionary authority'' should be performed by a ROP (Series 4) as stated in Amendment No. 1 to the Options Transfer Filing.

[13] 15 U.S.C. 78*o*–3(b)(6).

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[16] However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay. The Commission notes that FINRA's proposal is substantially similar to the rules of the Options Exchanges and does not raise any new substantive issues.[18] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to harmonize its rules with the rules of the Options Exchanges without undue delay. The Commission hereby grants FINRA's request and designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of such 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 proposal 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 No. SR–FINRA–2009–032 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 No. SR–FINRA–2009–032. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2009–032 and should be submitted on or before June 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12311 Filed 5–27–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization 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. FINRA has satisfied this notice requirement.

[17] *Id.*

[18] *See supra* note 5 and 11.

[19] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59955; File No. SR–FINRA–2009–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Implement an Interim Pilot Program With Respect to Margin Requirements for Certain Transactions in Credit Default Swaps

May 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items substantially have been prepared by FINRA. On May 19, 2009, FINRA submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposed rule change as amended on an accelerated basis to establish an interim pilot program.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 4240 (Margin Requirements for Credit Default Swaps). The proposed rule would implement an interim pilot program (the ''Interim Pilot Program'') with respect to margin requirements for transactions in credit default swaps (''CDS'') executed by a member (regardless of the type of account in which the transaction is booked), including those in which the offsetting matching hedging transactions (''matching transactions'') are effected by the member in CDS contracts that are cleared through the central counterparty clearing services of the Chicago Mercantile Exchange (the ''CME''). The proposed rule would expire on September 25, 2009.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

In addition, the text of the proposed rule change is set forth below. New language is in italics.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

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4200. MARGIN

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4240. Margin Requirements for Credit Default Swaps

(a) Effective Period of Interim Pilot Program

This Rule establishes an interim pilot program (''Interim Pilot Program'') with respect to margin requirements for any transactions in credit default swaps executed by a member (regardless of the type of account in which the transaction is booked), including those in which the offsetting matching hedging transactions (''matching transactions'') are effected by the member in contracts that are cleared through the central counterparty clearing services of the Chicago Mercantile Exchange (''CME''). The Interim Pilot Program shall automatically expire on September 25, 2009. For purposes of this Rule, the term ''credit default swap'' (''CDS'') shall mean any ''eligible credit default swap'' as defined in Securities Act Rule 239T(d), as well as any other CDS that would otherwise meet such definition but for being subject to individual negotiation, and the term ''transaction'' shall include any ongoing CDS position.

(b) Central Counterparty Clearing Arrangements

Any member, prior to establishing any clearing arrangement with respect to CDS transactions that makes use of any central counterparty clearing services provided by any clearing agency, pursuant to Securities Act Rule 239T(a)(1), must notify FINRA in advance in writing, in such manner as may be specified by FINRA in a Regulatory Notice.

(c) Margin Requirements

(1) CDS Cleared on the Chicago Mercantile Exchange

Members shall require as a minimum for computing customer or broker-dealer margin, with respect to any customer or broker-dealer transaction in CDS with a member in which the member executes a matching transaction that makes use of the central counterparty clearing facilities of the CME (''CME matching customer-side transaction''), the applicable margin pursuant to CME rules (sometimes referred to in such rules as a ''performance bond'') regardless of the type of account in which the transaction in CDS is booked. Members shall, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of this Rule, determine whether the applicable CME requirements are adequate with respect to their customer and broker-dealer accounts and the positions in those accounts and, where appropriate, increase such margin in excess of such minimum margin. For this purpose, members are permitted to use the margin requirements set forth in Supplementary Material .01 of this Rule.

The aggregate amount of margin the member collects from customers and broker-dealers for transactions in CDS must equal or exceed the aggregate amount of margin the member is required to post at CME with respect to those customer and broker-dealer transactions.

CME matching customer-side transactions are not subject to the provisions of paragraph (c)(2) of this Rule.

(2) CDS That Are Cleared on Central Counterparty Clearing Facilities Other Than the CME or That Settle Over-the-Counter (''OTC'')

Members shall require, with respect to any transaction in CDS that makes use of central counterparty clearing facilities other than the CME or that settle OTC, the applicable minimum margin as set forth in Supplementary Material .01 of this Rule regardless of the type of account in which the transaction in CDS is booked. However, members shall, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of this Rule, determine whether such margin is adequate with respect to their customer and broker-dealer accounts and, where appropriate, increase such requirements.

(d) Risk Monitoring Procedures and Guidelines

Members shall monitor the risk of any customer or broker-dealer accounts with exposure to CDS and shall maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member's capital over a specified range of possible market movements over a specified time period. For purposes of this Rule, members must employ the risk monitoring procedures and guidelines set forth in paragraphs (d)(1) through (8) of this Rule. The member must review, in accordance with the member's written procedures, at reasonable periodic intervals, the member's credit extension activities for consistency with the risk monitoring procedures and guidelines set forth in this Rule, and must determine whether the data necessary to apply the risk monitoring procedures and guidelines is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data, including:

(1) obtaining and reviewing the required account documentation and financial information necessary for assessing the amount of credit to be extended to customers and broker-dealers;

(2) assessing the determination, review and approval of credit limits to each customer and broker-dealer, and across all customers and broker-dealers, engaging in CDS transactions;

(3) monitoring credit risk exposure to the member from CDS, including the type, scope and frequency of reporting to senior management;

(4) the use of stress testing of accounts containing CDS contracts in order to monitor market risk exposure from individual accounts and in the aggregate;

(5) managing the impact of credit extended related to CDS contracts on the member's overall risk exposure;

(6) determining the need to collect additional margin from a particular customer or broker-dealer, including whether that determination was based upon the creditworthiness of the customer or broker-dealer and/or the risk of the specific contracts;

(7) monitoring the credit exposure resulting from concentrated positions within both individual accounts and across all accounts containing CDS contracts; and

(8) maintaining sufficient margin in each customer and broker-dealer account to protect against the default of the largest individual exposure in the account as measured by computing the largest maximum possible loss.

(e) Concentrations

Where the maximum current and potential exposure with respect to the largest single name CDS across all accounts exceeds the member's tentative net capital, the member must take a capital charge equal to the aggregate margin requirement for such accounts on the positions in such single name CDS in accordance with the tables set forth in Supplementary Material .01 of this Rule. This capital charge may be reduced by the amount of excess margin held in all customer and broker-dealer accounts.

** * * Supplementary Material:*

.01 Margin Requirements for CDS. The following customer and broker-dealer margin requirements shall apply, as appropriate, pursuant to paragraph (c) of this Rule.

(a) Customer and Broker-Dealer Accounts That Are Short a CDS

The following table shall be used to determine the margin that a member must collect from a customer or broker-dealer that is short a single name debt security CDS contract (sold protection). The margin is to be collected based upon the basis point spread over LIBOR of the CDS contract as well as the maturity of that contract as a percentage of the notional amount, shall be as follows:

Basis point spread	Length of time to maturity of CDS contract (in percent)			
	1 year	3 years	5 years	7 years & longer
0–100	1	2	4	7
100–300	2	5	7	10
300–500	5	10	15	20
500–700	10	15	20	25
700 and above	15	20	25	30

For those CDS contracts where the underlying obligation is a debt index, rather than a single name bond, the margin requirement as a percentage of the notional amount shall be as follows:

Index	Length of time to maturity of CDS contract (in percent)				
	1 year	3 years	5 years	7 years	10 years
CDX.IG	1	1	2	4	5
CDX.HY	3	5	10	12	15
CDX.HVOL	2	3	4	5	7

(b) Accounts That Are Long a CDS

For customer or broker-dealer accounts that are long the CDS contracts (purchased protection), the margin to be collected shall be 50% of the above amounts.

(c) Accounts That Maintain Both Long and Short CDS

In instances where the customer or broker-dealer maintains both long and short CDS, the member may elect to collect 50% of the above margin requirements on the greater of the long or short position within the same Bloomberg CDS sector, provided those long and short positions are in the same spread and maturity bucket.

If a customer or broker-dealer is long the bond and long a CDS contract on the same underlying obligor, margin needs to be collected only on the long bond position, provided that bond can be delivered against the long CDS contract, as prescribed pursuant to applicable FINRA margin rules.

In instances where the customer or broker-dealer is short the bond and short the CDS on the same underlying obligor, margin need only be collected on the short bond, as prescribed pursuant to applicable FINRA margin 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

FINRA is proposing to adopt FINRA Rule 4240 (Margin Requirements for Credit Default Swaps). The proposed rule would implement an Interim Pilot Program with respect to margin requirements for transactions in CDS executed by a member (regardless of the type of account in which the transaction is booked), including those in which matching transactions are effected by the member in CDS contracts that are cleared through the central counterparty clearing services of the CME. The proposed rule would expire on September 25, 2009.

(A). Background

On March 13, 2009, the Commission issued an Order granting temporary exemptions under the Exchange Act in response to a request by CME and Citadel Investment Group, LLC with respect to their proposal for CME to provide clearance and settlement services as a central counterparty for certain transactions in CDS.[3] The Commission issued similar Orders to LCH.Clearnet Ltd[4] and ICE U.S. Trust LLC.[5] The Commission also recently enacted interim final temporary rules providing enumerated exemptions under the federal securities laws for certain CDS to facilitate the operation of one or more central clearing counterparties in such CDS.[6] Finally,

[3] *See* Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009).

[4] *See* Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009).

[5] *See* Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009).

[6] *See* Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (Temporary Exemptions for Eligible Credit Default Swaps To Facilitate Operation of Central Counterparties To Clear and Settle Credit Default Swaps). Generally, as noted by the Commission, a CDS is a bilateral contract between two parties, known as counterparties. The value of this contract is based on underlying obligations of a single entity or on

the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Exchange Act for transactions in non-excluded CDS [7] (these Commission actions are hereinafter referred to collectively as the ''Commission's CDS Relief''). The Commission noted that these measures were intended to address concerns arising from systemic risk posed by CDS, including, among others, risks to the financial system arising from the lack of a central clearing counterparty to clear and settle CDS.[8]

Historically, in the absence of a central clearing counterparty, CDS transactions entered into by U.S. investment banks have not been booked in the member, but rather in the affiliated entities. In light of the rapid growth of the CDS market, and the potential inability of parties to meet their obligations as counterparties, the lack of a central clearing counterparty poses risks not only to the two parties to a CDS transaction, but also to the financial system overall because of the resulting chain of significant economic loss when one or more parties default on their obligations under a CDS transaction.

As discussed above, the Commission has issued exemptive Orders to allow three entities to act as CDS central clearing counterparties. Of these, the CME has requested that FINRA adopt customer margin rules for CDS and suggested a specific customer margin methodology that could be employed.[9] FINRA performed an analysis of the margin methodology suggested by CME, as well as the alternative methodology for CDS [10] prior to proposing Rule 4240. FINRA believes it is appropriate to adopt the proposed customer margin rule for CDS transactions during a limited pilot period for the reasons described below; however, FINRA represents that it will consider proposals it receives from other CDS central clearing counterparties to amend its customer margin rules for CDS and, if appropriate, will propose changes to its customer margin rules for CDS.[11]

Accordingly, FINRA proposes to adopt Proposed FINRA Rule 4240, which would impose margin rules for certain CDS transactions. The Interim Pilot Program is intended to be coterminous with the Commission's CDS Relief and would expire on September 25, 2009.

FINRA requests comment on the proposed rule during the period of the Interim Pilot Program. Among other matters that commenters may wish to address, FINRA is particularly interested in the following questions:

1. Since historically CDS transactions have not been undertaken in broker-dealers and therefore have not exposed broker-dealers to the risks of such transactions, is the advent of broker-dealer participation in these transactions, which entails greater individual risks to broker-dealers but which fosters less systemic risk because of the existence of a central clearing party for the matching transaction, a correct balancing of risks as a matter of public policy?

2. Do commenters believe that different or amended margin provisions would be superior to those set forth in the proposed rule?

(B). Proposal

(1) Scope of the Proposed Rule

Proposed FINRA Rule 4240(a) provides that the Interim Pilot Program would apply to margin requirements for any transactions in CDS executed by a member (regardless of the type of account in which the transaction is booked), including those in which the matching transactions are effected by the member in contracts that are cleared through the central clearing counterparty clearing services of the CME. FINRA notes that matching transactions that are cleared through the CME as the central clearing counterparty would be subject to margin requirements pursuant to CME rules (sometimes referred to in such rules as ''performance bond''). Accordingly, with respect to these matching transactions, the proposed rule is intended to apply to the side of the CDS transaction—executed between a member and a customer or other broker-dealer [12]—that is *not* cleared through the CME.[13]

Proposed FINRA Rule 4240(a) would define the term ''CDS'' for purposes of the rule. Specifically, CDS would include any ''eligible credit default swap'' as defined in Securities Act Rule 239T(d),[14] as well as any other CDS that would otherwise meet such definition but for being subject to individual negotiation.[15] In addition, the proposed rule provides that, for purposes of the rule, the term ''transaction'' includes any ongoing CDS position.

Proposed FINRA Rule 4240(a) provides that the Interim Pilot Program would automatically expire on September 25, 2009.

(2) Central Counterparty Clearing Arrangements

Proposed FINRA Rule 4240(b) would provide that any member, prior to establishing any clearing arrangement with respect to CDS transactions that makes use of any central counterparty clearing services provided by any clearing agency, pursuant to Securities Act Rule 239T(a)(1),[16] must notify FINRA in advance in writing, in such manner as may be specified by FINRA in a *Regulatory Notice.*

(3) Margin Requirements: CDS Cleared on the CME

Proposed FINRA Rule 4240(c)(1) provides that a member, as a minimum for computing customer or broker-dealer margin, with respect to any customer or broker-dealer transaction in CDS with a member in which the member executes a CME matching customer-side transaction, must require the applicable margin pursuant to CME rules regardless of the type of account in which the transaction in CDS is booked. The proposed rule would require that members must, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of the proposed rule,[17] determine whether the applicable CME requirements are adequate with respect to their customer and broker-dealer accounts and the positions in those accounts and, where appropriate, increase such margin in excess of the minimum margin. For this purpose, the proposed rule would

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.

[7] *See* Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009).

[8] *See supra,* notes 3, 4, 5, 6, and 7.

[9] The methodology CME proposed was amended based on FINRA's analysis. FINRA's proposed rule sets forth additional requirements. *See* Proposed FINRA Rule 4240(c)(1).

[10] *See* Proposed FINRA Rule 4240(c)(2).

[11] Based on communications on or about April 22, 2009 between Bonnie Gauch of the Commission's Division of Trading and Markets and Grace Vogel of FINRA.

[12] NASD Rule 0120(g) states that the term ''customer'' shall not include a broker or dealer. For purposes of the proposed rule, the terms ''customer or broker-dealer'' and ''customer and broker-dealer'' are intended to include any party with which a member executes a CDS transaction.

[13] Under Proposed FINRA Rule 4240(c)(1), such transactions are defined as ''CME matching customer-side transactions.'' *See* Section (B)(3) under this Item. Under Proposed FINRA Rule 4240(c)(1), the term ''CME matching customer-side transaction'' would include any party, including a broker-dealer.

[14] 17 CFR 230.239T(d).

[15] FINRA notes that Rule 239T(d) excludes contracts that are ''subject to individual negotiation.'' The proposed FINRA rule would reach CDS contracts, subject to the other criteria set forth in Rule 239T(d), without regard to whether they are individually negotiated.

[16] 17 CFR 230.239T(a)(1).

[17] *See* Proposed FINRA Rule 4240(d).

permit members to use the margin requirements set forth in the proposed rule's Supplementary Material.[18]

It is FINRA's understanding that, after calculating margin on an account-specific basis, CME performs stress tests to assess concentration risk across a member's customer and house portfolios.[19] Further, CME may require that a member post additional margin based on the results of those concentration risk stress tests. Accordingly, Proposed FINRA Rule 4240(c)(1) would require that the aggregate amount of margin the member collects from customers and broker-dealers for transactions in CDS must equal or exceed the aggregate amount of margin the member is required to post at CME with respect to those customer and broker-dealer transactions.

CME matching customer-side transactions, being subject to the margin guidelines set forth in Proposed FINRA Rule 4240(c)(1), are not subject to the margin guidelines as set forth in paragraph (c)(2) of the proposed rule. However, members are encouraged to apply higher margin requirements where appropriate.

(4) Margin Requirements: CDS That Are Cleared on Central Counterparty Clearing Facilities Other Than the CME or That Settle Over-the-Counter (''OTC'')

Proposed FINRA Rule 4240(c)(2) would provide that a member, with respect to any transaction in CDS that makes use of central counterparty clearing facilities other than the CME or that settle OTC, must require the applicable minimum margin as set forth in the proposed rule's Supplementary Material regardless of the type of account in which the transaction in CDS is booked.[20] However, the proposed rule provides that a member must, based on the risk monitoring procedures and guidelines set forth in paragraph (d) of the proposed rule, determine whether such margin is adequate with respect to their customer and broker-dealer accounts and, where appropriate, increase the requirements.

(5) Risk Monitoring Procedures and Guidelines

Proposed FINRA Rule 4240(d) provides that members must monitor the risk of any customer or broker-dealer accounts with exposure to CDS and must maintain a comprehensive written risk analysis methodology for assessing the potential risk to the member's capital over a specified range of possible market movements over a specified time period. The proposed rule would require that members must employ the risk monitoring procedures and guidelines set forth in Proposed FINRA Rule 4240(d)(1) through (8).[21] Further, the rule would require the member to review, in accordance with the member's written procedures, at reasonable periodic intervals, the member's credit extension activities for consistency with the risk monitoring procedures and guidelines set forth in the rule, and to determine whether the data necessary to apply the risk monitoring procedures and guidelines is accessible on a timely basis and information systems are available to adequately capture, monitor, analyze and report relevant data (*i.e.*, the data relevant for purposes of the risk monitoring procedures and guidelines set forth in Proposed FINRA Rule 4240(d)(1) through (8)).

(6) Concentrations

Proposed FINRA Rule 4240(e) would require that, where the maximum current and potential exposure with respect to the largest single name CDS across all accounts exceeds the member's tentative net capital, the member must take a capital charge equal to the aggregate margin requirement for such accounts on the positions in such single name CDS in accordance with the tables set forth in the proposed rule's Supplementary Material.[22] This additional requirement for concentrated positions reflects FINRA's concern for the possibility of a sudden default in the largest single name CDS across all accounts in respect of which a member has current or potential exposure. However, the proposed rule would allow a member to reduce this capital charge by the amount of the excess margin held in all customer and broker-dealer accounts.

(7) Proposed FINRA Rule 4240.01

Proposed FINRA Rule 4240.01, a Supplementary Material, sets forth the customer and broker-dealer margin requirements that would apply with respect to CDS, as appropriate, pursuant to paragraph (c) of the proposed rule. The proposed rule addresses customer and broker-dealer accounts that are short a CDS, accounts that are long a CDS and accounts that maintain both long and short CDS. Paragraph (c) of the Supplementary Material provides, with respect to accounts that maintain both long and short CDS, that if a customer or broker-dealer is long the bond and long a CDS contract on the same underlying obligor, margin would need to be collected only on the long bond position, provided that bond can be delivered against the long CDS contract, as prescribed pursuant to applicable FINRA margin rules.[23] In instances where the customer or broker-dealer is short the bond and short the CDS on the same underlying obligor, margin need only be collected on the short bond, again as prescribed pursuant to applicable FINRA margin rules.[24] FINRA notes that, for purposes of the proposed rule, the term ''applicable FINRA margin rules'' refers to requirements pursuant to NASD Rule 2520 or Incorporated NYSE Rule 431, as applicable to the member.[25] FINRA plans to address NASD Rule 2520 and Incorporated NYSE Rule 431 later as part of FINRA's rulebook consolidation process, and, accordingly, will amend Proposed FINRA Rule 4240.01(c) as appropriate to refer to the new, consolidated FINRA margin rule.[26]

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, but FINRA does

[18] *See* Proposed FINRA Rule 4240.01.

[19] *See* Letter from Adam Cooper, Senior Managing Director and General Counsel, Citadel Investment Group, L.L.C., and Ann K. Shulman, Managing Director and Deputy General Counsel, Chicago Merchantile Exchange Inc., to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated March 12, 2009 (available at *http://www.sec.gov/rules/exorders/2009/cme-citadel-exreq.pdf*). Letter from Lisa A. Dunsky, Director & Associate General Counsel, CME Group, to David Stawick, Secretary, Commodity Futures Trading Commission, dated December 19, 2008, (available at: *http://www.cftc.gov*).

[20] *See* Proposed FINRA Rule 4240.01.

[21] *See* Proposed FINRA Rule 4240(d)(1) through (8).

[22] *See* Proposed FINRA Rule 4240.01.

[23] As originally proposed, the rule change would have stated, ''If a customer or broker-dealer is long the bond and long a CDS contract on the same underlying obligor, margin needs to be collected only on the long bond position, provided that bond can be delivered against the *short* CDS contract, as prescribed pursuant to applicable FINRA margin rules.'' Amendment No. 1 corrected this sentence by changing the word ''short'' directly preceding the second ''CDS'' to ''long.''

[24] As originally proposed, the rule change would have stated, ''In instances where the customer or broker-dealer is short the bond and short the CDS, margin need only be collected on the short bond, as prescribed pursuant to applicable FINRA margin rules.'' Amendment No. 1 clarified this sentence by adding the phrase ''on the same underlying obligor'' directly following the word ''CDS.''

[25] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms.

[26] For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

intend to issue such *Regulatory Notice* as soon as practicable in the event of SEC approval of the proposed rule change given the limited time period of the proposed Interim Pilot Program.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[27] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, consistent with goals set forth by the Commission when it provided the Commission's CDS Relief with respect to the operation of central counterparties to clear and settle CDS, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

Pursuant to Section 19(b)(2) of the Act,[28] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. FINRA also has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. For the Commission to approve rule changes proposed by a registered securities association (*e.g.*, FINRA) the proposed rule changes must be consistent with the requirements of the Exchange Act, including Section 15A(b)(6) of the Act,[29] and the rules and regulations thereunder. Section 15A(b)(6) requires that the rules of a registered securities association 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 securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by [Section 15A] matters not related to the purposes of [Section 15A] or the administration of the association.''

The over-the-counter (''OTC'') market for CDS has been a source of concerns to the Commission and other financial regulators.[30] These concerns include the systemic risk posed by CDS, highlighted by the possible inability of parties to meet their obligations as counterparties and the potential resulting adverse effects on other markets and the financial system.[31] Recent credit market events have demonstrated the seriousness of these risks in a CDS market operating without meaningful regulation, transparency,[32] or central clearing counterparties.[33] These events have emphasized the need for central clearing counterparties as mechanisms to help control such risks.[34] Establishment of central clearing counterparties for CDS is expected to reduce the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts. As we have stated previously,[35] given the continued uncertainty in this market, taking action to help foster the prompt development of central clearing counterparties is in the public interest.

The Commission believes that using well-regulated central clearing counterparties to clear transactions in CDS helps promote efficiency and reduce risk in the CDS market and among its participants.[36] These benefits can be particularly significant in times of market stress, as central clearing counterparties can mitigate the potential for a market participant's failure to destabilize other market participants, and reduce the effects of misinformation and rumors.[37] Central clearing counterparty-maintained records of CDS transactions may also aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[38]

Well-regulated central clearing counterparties also are expected to address concerns about counterparty risk by substituting the creditworthiness and liquidity of the central clearing counterparties for the creditworthiness and liquidity of the counterparties to a CDS.[39] In the absence of central clearing counterparties, participants in the OTC CDS market must carefully manage their counterparty risks because a default by a counterparty can render worthless, and payment delay can reduce the usefulness of, the credit protection that has been bought by a CDS purchaser.[40] Firms that trade CDS OTC attempt to manage counterparty risk by carefully selecting and monitoring their counterparties, entering into legal agreements that permit them to net gains and losses across contracts with a defaulting counterparty, and often requiring counterparty exposures to be collateralized.[41] Central clearing

[27] 15 U.S.C. 78*o*–3(b)(6).

[28] 15 U.S.C. 78s(b)(2).

[29] 15 U.S.C. 78*o*–3(b)(6).

[30] *See* Securities Exchange Act Releases Nos. 59164, p. 1 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009), 59165, p. 1 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009), 59527, p. 1 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), 59578, p. 1 (Mar 13, 2009), 74 FR 11781, at 11782 (Mar. 19, 2009), and Securities Act Release No. 8999, p. 4 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009).

[31] *Id.* In addition to the potential systemic risks that CDS pose to financial stability, we are concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

[32] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets, November 14, 2008, available at *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf* (''Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.'').

[33] *See* The Role of Credit Derivatives in the U.S. Economy Before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission).

[34] *See id.*

[35] *See* Securities Exchange Act Release Nos. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009), 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), and 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009).

[36] *See* Securities Exchange Act Releases Nos. 59164, p. 4 (Dec. 24, 2008), 74 FR 139, at 140 (Jan. 2, 2009), 59527, p. 4 (Mar. 6, 2009), 74 FR 10791, at 10792 (Mar. 12, 2009), and 59578, p. 4 (Mar. 13, 2009), 74 FR 11781, at 11782 (Mar. 19, 2009).

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *See generally* R. Bliss and C. Papathanassiou, ''Derivatives clearing, central counterparties and novation: The economic implications,'' *http://www.ecb.int/events/pdf/conferences/ccp/BlissPapathanassiou_final.pdf* (Mar. 8, 2006), at 6.

Continued

counterparties are expected to allow participants to avoid the risks specific to individual counterparties because central clearing counterparties generally ''novate'' bilateral trades by entering into separate contractual arrangements with both counterparties—becoming buyer to one and seller to the other.[42] Through novation, it is the central clearing counterparty that assumes the counterparty risks. For this reason, central clearing counterparties for CDS are expected to contribute generally to the goal of market stability.[43] As part of its risk management, a central clearing counterparty may subject novated contracts to initial and variation margin requirements and establish a clearing fund.[44] A central clearing counterparty also may implement a loss-sharing arrangement among its participants to respond to a participant insolvency or default.[45]

Central clearing counterparties also are expected to reduce CDS risks through multilateral netting of trades.[46] Trades cleared through a central clearing counterparty would limit a participant's exposure to an OTC market dealer, permitting the participant to accept the best bid or offer in the OTC market regardless of the creditworthiness of the dealer.[47] In addition, by allowing netting of positions in similar instruments, and netting of gains and losses across different instruments, central clearing counterparties are expected to reduce redundant notional exposures and promote the more efficient use of resources for monitoring and managing CDS positions.[48] Through risk controls, including controls on market-wide concentrations that cannot be implemented effectively when counterparty risk management is decentralized, central clearing counterparties are expected to help prevent a single market participant's failure from destabilizing other market participants and, ultimately, the broader financial system.[49]

After careful consideration, the Commission finds that FINRA's proposed rule change to establish a pilot program implementing minimum customer margin requirements for transactions in CDS is consistent with the requirements of the Exchange Act,[50] including Section 15A(b)(6) of the Act.[51] In particular, the Commission finds that FINRA's proposed rule is consistent with Section 15A(b)(6) of the Act[52] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission notes that the proposed rule is intended to promote greater accuracy and efficiency with respect to Exchange margin requirements. The proposed rule is intended to align a customer's total margin requirement for CDS positions with the actual risk associated with those positions taken as a whole. FINRA's proposed rule also is consistent with 15A(b)(6) of the Act[53] because it is designed to limit the amount of leverage a customer can obtain though CDS positions and decreases the risk that a broker-dealer will fail because its customers are unable to fulfill their obligations to the firm.

The Commission also finds that accelerated approval is appropriate. More specifically, accelerated approval will allow the pilot program, which will expire on September 25, 2009, to be in effect for a sufficient period of time to permit FINRA to properly evaluate the performance of the margin rule so that it can propose suitable permanent margin rules for CDS. Further, accelerated approval is appropriate because it will enable the CME to immediately begin clearing customer, in addition to proprietary, CDS positions, and therefore, enable market participants to receive more quickly the benefits described above, such as increased market stability, arising from the existence of a well-regulated central clearing counterparty.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted

See also ''New Developments in Clearing and Settlement Arrangements for OTC Derivatives,'' Committee on Payment and Settlement Systems, BIS, at 25 (Mar. 2007), available at *http://www.bis.org/pub/cpss77.pdf*; ''Reducing Risks and Improving Oversight in the OTC Credit Derivatives Market,'' Before the Sen. Subcomm. On Secs., Ins. and Investments, 110th Cong. (2008) (Statement of Patrick Parkinson, Deputy Director, Division of Research and Statistics, FRB).

[42] *See* Securities Exchange Act Releases Nos. 59164, p. 4 (Dec. 24, 2008), 74 FR 139, at 140 (Jan. 2, 2009), 59527, p. 4 (Mar. 6, 2009), 74 FR 10791, at 10792 (Mar. 12, 2009), and 59578, p. 4 (Mar. 13, 2009), 74 FR 11781, at 11782 (Mar. 19, 2009). ''Novation'' is a ''process through which the original obligation between a buyer and seller is discharged through the substitution of the central clearing counterparty as seller to buyer and buyer to seller, creating two new contracts.'' Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, Recommendations for Central Counterparties (November 2004) at 66.

[43] *See* Securities Exchange Act Releases Nos. 59164, p. 5 (Dec. 24, 2008), 74 FR 139, at 140 (Jan. 2, 2009), 59527, p. 5 (Mar. 6, 2009), 74 FR 10791, at 10792 (Mar. 12, 2009), and 59578, p. 5 (Mar. 13, 2009), 74 FR 11781, at 11782 (Mar. 19, 2009).

[44] *Id.*

[45] *Id.*

[46] *See* Securities Exchange Act Releases Nos. 59164, p. 5 (Dec. 24, 2008), 74 FR 139, at 140 (Jan. 2, 2009), 59527, p. 5 (Mar. 6, 2009), 74 FR 10791, at 10792 (Mar. 12, 2009), and 59578, p. 5 (Mar. 13, 2009), 74 FR 11781, at 11782 (Mar. 19, 2009). *See also,* ''New Developments in Clearing and Settlement Arrangements for OTC Derivatives,'' *supra* note 11, at 25. Multilateral netting of trades would permit multiple counterparties to offset their open transaction exposure through the central clearing counterparty, spreading credit risk across all participants in the clearing system and more effectively diffusing the risk of a counterparty's default than could be accomplished by bilateral netting alone.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78o–3(b)(6).

[52] *Id.*

[53] *Id.*

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–012 and should be submitted on or before June 18, 2009.

V. Conclusion

For the foregoing reasons, pursuant to Section 19(b)(2) of the Act,[54] the Commission finds good cause to approve the proposed rule change on an accelerated basis.

It is hereby ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2009–012) be, and it hereby is, approved on an accelerated basis to establish an interim pilot program expiring on September 25, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–12342 Filed 5–27–09; 8:45 am]

BILLING CODE 8010–01–P

[54] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59949; File No. SR–ISE–2007–97]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Market Data Fees

May 20, 2009.

I. Introduction

On October 5, 2007, International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees for a real-time depth of market data offering. On March 9, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 7, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange currently produces and provides free of charge a data feed that contains the aggregate bid and offer size available at the first five price levels on ISE's limit order book, the ISE Depth of Market Data Feed (''Depth of Market''). The Depth of Market feed includes non-marketable orders and quotes that are displayed, and is distributed in real time.

ISE has proposed to establish fees for its Depth of Market product. ISE will make this product available to members and non-members, and to professional and non-professional subscribers. Specifically, the Exchange proposes to charge distributors of Depth of Market $5,000 per month.[4] In addition, the Exchange proposes to charge each distributor a monthly fee per controlled device[5] of $50 per controlled device for Professionals (for internal use or external redistribution through a controlled device) and $5 per controlled device for Non-Professionals who receive the data from a distributor through a controlled device.[6] ISE proposes to cap the monthly maximum amount of fees payable by a distributor at $7,500 for Professionals where the data is for internal use only; $12,500 for Professionals where the data is redistributed externally; and $10,000 for Non-Professionals who receive the data from a distributor. The Exchange proposes to charge distributors a flat fee of $1,000 for the first month after connectivity has been established between ISE and the distributor. Further, the Exchange proposes to waive all user fees during this one month period.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act[10] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[11] In the NYSE Arca Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.''[12] It noted that the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.''[13] If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' the Commission will approve a proposal unless it determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.''[14]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59679 (April 1, 2009), 74 FR 15795 (''Notice'').

[4] A ''distributor'' will be defined as any firm that receives an ISE data feed directly from ISE or indirectly through a ''redistributor'' and then distributes it either internally or externally. ISE proposes that all distributors execute an ISE distributor agreement. ''Redistributors'' will include market data vendors and connectivity providers such as extranets and private network providers.

[5] A ''controlled device'' is defined as any device that a distributor of the ISE Depth of Market permits to access the information in the Depth of Market offering.

[6] In differentiating between a ''Non-Professional Subscriber'' and a ''Professional Subscriber,'' ISE will apply the same criteria for qualification as in the Consolidated Tape Association Plan (''CTA Plan'') and the Consolidated Quotation Plan (''CQ Plan'').

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] U.S.C. 78f(b)(8).

[11] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (''NYSE Arca Order'').

[12] *Id.* at 74771.

[13] *Id.* at 74782.

[14] *Id.* at 74781.

As noted in the NYSE Arca Order, the standards in Section 6 of the Act do not differentiate between types of data and therefore apply to exchange proposals to distribute both core data and non-core data.[15] All U.S. options exchanges are required pursuant to the OPRA Plan to provide ''core data''—the best-priced quotations and comprehensive last sale reports—to OPRA, which data is then distributed to the public pursuant to the OPRA Plan.[16] In contrast, individual exchanges and other market participants distribute non-core data voluntarily.[17] The mandatory nature of the core data disclosure regime leaves little room for competitive forces to determine products and fees.[18] Non-core data products and their fees are, by contrast, much more sensitive to competitive forces. The Commission therefore is able to rely on competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of Section 6.[19]

Because ISE's instant proposal relates to the distribution of non-core data, the Commission will apply the market-based approach set forth in the NYSE Arca Order. Pursuant to this approach, the first step is to determine whether ISE was subject to significant competitive forces in setting the terms of its non-core market data proposal, including the level of any fees. As in the Commission's NYSE Arca Order, in determining whether ISE was subject to significant competitive forces in setting the terms of its proposal, the Commission has analyzed ISE's compelling need to attract order flow from market participants, and the availability to market participants of alternatives to purchasing ISE's non-core market data.

The Commission believes that the options industry currently is subject to significant competitive forces. It is generally accepted that the start of wide-spread multiple listing of options across exchanges in August 1999 greatly enhanced competition among the exchanges.[20] The launch of three new options exchanges since that time, numerous market structure innovations, and the start of the options penny pilot[21] have all further intensified intermarket competition for order flow.

ISE currently competes with six other options exchanges for order flow.[22] Attracting order flow is an essential part of ISE's competitive success.[23] If ISE cannot attract order flow to its market, it will not be able to execute transactions. If ISE cannot execute transactions on its market, it will not generate transaction revenue. If ISE cannot attract orders or execute transactions on its market, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue and thus not be competitive with other exchanges that have this ability. In its filing, ISE provided market share data for the seven options exchanges over a two year period from 2006 through 2008:[24]

QUARTERLY MARKET SHARE BASED ON AVERAGE DAILY VOLUME														
PERIOD	ISE		AMEX		BOX		CBOE		NYSEArca		PHLX		NSDQ	
Q1 06	30.46%		10.05%	▼	5.04%	▼	31.79%		9.98%	▼	12.68%	▼	n/a	
Q2 06	29.05%	▼	9.62%	▼	4.92%	▼	35.25%		8.46%	▼	12.70%		n/a	
Q3 06	29.59%		9.66%		4.64%	▼	33.81%	▼	9.29%		13.01%		n/a	
Q4 06	27.86%	▼	9.56%	▼	4.07%	▼	32.24%	▼	10.96%		15.30%		n/a	
Q1 07	27.76%	▼	9.60%		4.08%		33.73%		11.40%		13.42%	▼	n/a	
Q2 07	28.20%		8.88%	▼	4.32%		33.92%		10.81%	▼	13.88%		n/a	
Q3 07	28.11%	▼	8.02%	▼	4.88%		34.05%		10.60%	▼	14.34%		n/a	
Q4 07	28.25%		7.49%	▼	4.71%	▼	30.77%	▼	13.71%		15.06%		n/a	
Q1 08	29.40%		6.02%	▼	4.66%	▼	31.97%		13.44%	▼	14.50%	▼	n/a	
Q2 08	28.79%	▼	6.16%		5.16%		32.28%		11.37%	▼	15.61%		0.63%	
Q3 08	27.55%	▼	5.54%	▼	4.87%	▼	34.04%		11.27%	▼	15.50%	▼	1.23%	
Q4 08	26.81%	▼	5.46%	▼	5.29%		34.88%		10.45%	▼	15.51%		1.60%	

The market share percentages in this chart strongly indicate that ISE must compete vigorously for order flow to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on ISE to act reasonably in setting its fees for ISE market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom ISE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival.[25]

[15] *Id.* at 74779.

[16] *See* Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''), Sections V(a)–(c).

[17] *See* NYSE Arca Order, *supra,* note 11, at 74779.

[18] *Id.*

[19] *Id.*

[20] *See* generally *Concept Release: Competitive Developments in the Options Markets,* Securities Exchange Act Release No. 49175 (February 3, 2004), 69 FR 6124 (February 9, 2004); *see also* Battalio, Robert, Hatch, Brian, and Jennings, Robert, *Toward a National Market System for U.S. Exchange-listed Equity Options,* The Journal of Finance 59 (933–961); De Fontnouvelle, Patrick, Fishe, Raymond P., and Harris, Jeffrey H., *The Behavior of Bid-Ask Spreads and Volume in Options Markets During the Competition for Listings in 1999,* The Journal of Finance 58 (2437–2463); and Mayhew, Stewart, *Competition, Market Structure, and Bid-Ask Spreads in Stock Option Markets,* The Journal of Finance 57 (931–958).

[21] *See, e.g.* , Securities Exchange Act Release Nos. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106); 55073 (January 9, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–48); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); and 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74).

[22] In its filing, ISE states that ''the options exchanges compete vigorously for order flow,'' and that ''ISE currently competes with six other options exchanges for order flow and 'the competition is fierce'.'' *See* Notice, *supra* note 3, at 15797.

[23] ISE states in its filing that ''[i]n order for ISE to maintain its market share, it must compete vigorously for order flow.'' *Id.*

[24] *See id.*

[25] In its filing, ISE notes that despite frequent variations in market share, no single exchange has more than approximately one-third market share. It

ISE currently trades options on 16 proprietary index products that are not traded on any other exchange. ISE represents that these 16 options currently represent less than 0.02% of ISE's total contract volume.[26] The Commission believes that, given the small percentage of ISE's total contract volume represented by these 16 products, the inclusion of data on these products in ISE's Depth of Market product will not confer market power on ISE to compel market participants to purchase the entire ISE data feed. The Commission therefore believes that the inclusion of depth-of-book data for these products in ISE's Depth of Market product does not undermine the finding that ISE was subject to significant competitive forces in setting the terms of its proposal.

In addition to the need to attract order flow, the availability of alternatives to ISE's Depth of Market product significantly affect the terms on which ISE can distribute this market data.[27] In setting the fees for its Depth of Market product, ISE must consider the extent to which market participants would choose one or more alternatives instead of purchasing its data.[28] The most basic source of information concerning the depth generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.[29] In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.[30] Further, other options exchanges can produce their own depth of market data products, and thus are sources of potential competition for ISE. In addition, one or more securities firms could act independently and distribute their own order data, with or without a fee.

ISE states in it is filings that of the nearly 200 firms that are members of the Exchange, less than 15 percent currently access the Depth of Market product, which the Exchange has been offering at no cost.[31] The fact that many of ISE's own members did not choose to access the Depth of Market product even when there was no cost for doing so strongly suggests that ISE does not have monopoly pricing power for its Depth of Market product.[32]

The Commission believes that there are a number of alternative sources of information that impose significant competitive pressures on ISE in setting the terms for distributing its Depth of Market product. The Commission believes that the availability of those alternatives, as well as ISE's compelling need to attract order flow, imposed significant competitive pressure on ISE to act equitably, fairly, and reasonably in setting the terms of its proposal.[33]

Because ISE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that the terms of the proposal fail to meet the applicable requirements of the Act or the rules thereunder. The Commission did not receive any comments on the terms of the proposal. Further, an analysis of the proposal does not provide such a basis. The Commission notes that the per controlled device fees as proposed will be the same for all Professional subscribers ($50) and the same for all Non-Professional subscribers ($5). The fees therefore do not unreasonably discriminate among types of subscribers, such as by favoring participants in the ISE market or penalizing participants in other markets.[34]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change, as amended (SR–ISE–2007–97), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Florence E. Harmon,

Deputy Secretary.

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further states that, given the current competitive pressures in the option industry, no exchange can take any of its share of trading for granted. ISE states that, in order for it to maintain its market share, it must compete vigorously for order flow, and that given the portability of order flow from one exchange to another, a pricing misstep can easily result in loss of order flow, customers and, ultimately, revenue. *See id.*

[26] *See id.* ISE represents that as of March 9, 2009, of the more than 2,000 underlying securities whose options are traded on ISE, 41 products are singly listed on ISE, which collectively represent less than .02 percent of ISE's total contract volume. Of those 41 products, 16 are proprietary ISE index options, all of which are available for licensing by ISE to any other exchange, four are index options that ISE has non-exclusively licensed from index providers and that are available to other exchanges to license, 10 are options on Exchange Traded Funds that other exchanges have chosen not to list, and the remaining 11 products are equity options that either the other exchanges have chosen not to list or are in the process of being de-listed and thus are available for closing only transactions on ISE.

ISE further notes that when another exchange has shown an interest in trading a proprietary ISE product, the Exchange has licensed the trading in that product to the other exchange. For example, ISE represents that NYSE Arca recently signed a license agreement with ISE to list and trade ISE's foreign currency options, and that this ISE proprietary product is now multiply listed. ISE states that it is ready, willing, and able to license its proprietary index products for trading on other exchanges on commercially reasonable terms. *See id.* at 15797 to 15798.

[27] *See* NYSE Arca Order, *supra* note 11, at 74784.

[28] *See id.* at 74783.

[29] *Id.*

[30] *Id.* Information on transactions executed on ISE is available through OPRA.

[31] *See* Notice, *supra* note 3, at 15798.

[32] In reaching its conclusion in the NYSE Arca Order, the Commission noted that the fact that 95% of the professional users of Nasdaq core data (where Nasdaq has a substantial market share in Nasdaq-listed stocks) choose not to purchase Nasdaq's depth-of-book market data strongly suggests that no exchange has monopoly pricing for its depth-of-book order data. *See* NYSE Arca Order, *supra* note 11, at 74785.

[33] The Commission stated in the NYSE Arca Order that broker-dealers are not required to obtain depth-of-book order data to meet their duty of best execution. *See id.* at 74788 for a more detailed discussion. Likewise, the Commission does not view obtaining depth-of-book data as a necessary prerequisite to broker-dealers satisfying the duty of best execution with respect to the trading of standardized options.

[34] The Commission notes that the CTA participants' fees have long provided for a lower fee for non-professional subscribers, and that the fees approved by the Commission in the NYSE Arca Order also provided for lower fees for non-professional subscribers. *See* NYSE Arca Order, *supra* note 11, at 74772.

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6640]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Critical Language Scholarships for Intensive Summer Institutes

Announcement Type: New Cooperative Agreements.

Funding Opportunity Number: ECA/A/E–10–01.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: July 10, 2009.

Executive Summary: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for two or more assistance awards for the 2010 Critical Language Scholarships for Intensive Summer Institutes, which provide foreign language instruction overseas for American undergraduate and graduate students. Public and private non-profit organizations, or consortia of such organizations, meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3), may submit proposals to cooperate with the Bureau in the administration and implementation of one or both of the two components

available under this competition. Each component requires a separate proposal submission.

It is anticipated that the total amount of funding available for all FY 2010 administrative and program costs to support both program components A and B, including all language groupings, outlined below will be $10,000,000. Applicant organizations bidding on two or more language groups must submit a separate proposal not exceeding $350,000 for the recruitment and selection of all participants (Component A). Applicant organizations may submit proposals requesting funds not exceeding $9,650,000 to implement the CLS institutes between June and August 2010 (Component B).

Average participant costs per language group under Component B should not exceed $16,000.

Component A: Participant Recruitment and Selection: The first component of this competition is for recruitment and selection of all U.S. participants for these summer institutes. While the CLS Institutes are active in multiple countries, it is important that a single worldwide program identity be maintained. Therefore, applicant organizations applying to administer programs for two or more language groups are required to submit a separate proposal for this component, demonstrating the capacity to conduct a nationwide participant recruitment and selection process for all language institutes.

Only applicant organizations applying for two or more of the language groups listed below will be eligible to bid on this component. Only one organization will be selected to administer the participant recruitment and selection process.

Component B: Administration and Implementation of Institutes:

The second component is for the administration and implementation of six- to ten-week summer institutes overseas for participants in countries where Arabic, Chinese, Indonesian, Japanese, Korean, Russian and the Indic, Persian, and Turkic language families are widely spoken.

Eligible organizations or consortia may submit proposals for the administration and implementation of one or more of the following language groupings:

- Arabic language institutes in the Near East and North Africa region for not less than a total of 185 advanced beginning, intermediate and advanced students.
- Chinese, Indonesian, Japanese, and Korean language institutes in the East Asia and Pacific region for not less than a total of 155 beginning (Korean and Indonesian only), intermediate and advanced students.
- Azerbaijani, Russian and Turkish language institutes in the Europe and Eurasia region for not less than a total of 143 beginning (Turkish only), intermediate and advanced students.
- Persian and Indic (Bangla/Bengali, Hindi, Punjabi, and Urdu) language institutes in the South Central Asia region for not less than a total of 92 beginning (Indic languages only), intermediate and advanced students.

See section on ''Country and Language Information'' under ''Administration and Implementation of Institutes'' for additional information and a description of language levels.

These summer institutes should offer U.S. undergraduate and graduate students structured classroom instruction and less formal interactive learning opportunities through a comprehensive exchange experience that primarily emphasizes language learning. Proposals from applicant organizations should demonstrate the development of new institutional language-teaching capacity overseas for these summer institutes and not propose enrolling participants in programs already in existence. This program is designed to develop additional overseas language study opportunities for U.S. students.

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.'' The funding authority for the program above is provided through legislation.

Purpose: The Bureau of Educational and Cultural Affairs (ECA) is supporting the participation of American undergraduate and graduate students in intensive, substantive foreign language study to dramatically increase the number of Americans learning, speaking, and teaching critical need foreign languages.

Foreign language skills are essential to engaging foreign governments and peoples, especially in critical world regions, to promote understanding, convey respect for other cultures, and encourage reform. These skills are also fundamental to the economic competitiveness and security interests of the nation.

The goals of the Critical Language Scholarships (CLS) for Intensive Summer Institutes are:

- To develop a cadre of Americans with advanced linguistic skills and related cultural understanding who are able to advance international dialogue, and compete effectively in the global economy; and
- To improve the ability of Americans to engage with the people of other countries in the language of the partner country.

In order to achieve these goals, the Bureau supports programs for American undergraduate and graduate students to gain and improve language proficiency in Arabic, Chinese, Indonesian, Japanese, Korean, Russian and the Indic, Persian, and Turkic language families. ECA plans to issue a single award for recruitment and selection of all participants and one or more awards for the administration of the CLS Institutes. Organizations with expertise in one or more of the indicated languages may also seek partners in the other languages to submit a single proposal as a consortium. Consortia submitting proposals must designate a lead institution to receive the award.

Other Notes: The organization must inform the ECA program officer of its progress at each stage of the project's implementation in a timely fashion.

Component A: Participant Recruitment and Selection

An applicant organization applying for two or more language groups must submit a separate proposal to conduct a nationwide competition for participants, which includes recruiting, screening, and selecting U.S. citizen undergraduate and graduate students for the program. Funding requested in a proposal for this element should not exceed $350,000.

Recruitment: Applicant organizations should propose a comprehensive outreach plan to publicize and recruit for the program at U.S. colleges and universities nationwide. Information about the overall CLS program and specific institutes, along with all accompanying application materials, should be posted online.

The Bureau requests that student applicants use an online application system. An alternate paper-based

application should also be provided for those candidates unable to apply online. These paper-based applications, however, must be entered into the online system by recipient organization program staff. All application materials should be available in a sortable, searchable, electronically accessible database format that can be easily shared with the Bureau upon request.

Selection: Selected participants should show strong evidence of ability to succeed in an intensive, demanding language study program and should represent the diversity of the United States. Diversity addresses religion, ethnicity, socio-economic status, and physical abilities. Selected students should also represent diversity of institutional type and fields of study, a balance between genders, and a balance between undergraduate and graduate students. Preference should be given to candidates with no previous study overseas. Selected students should have completed at least their first year of undergraduate study by the summer of 2010. Selected students should demonstrate the intention and ability to continue their language study beyond the scholarship period and apply their critical language skills later in their professional careers. The students' language skills at the start of the institute should meet the requirements for each language outlined in Component B.

ECA should approve the selection plan for candidates, as well as the selection of both finalists and alternates for the program.

Publicity: The proposal must describe how these intensive summer language institutes will be publicized to media outlets, including print, online, and broadcast to reach the widest possible audience of qualified students. The applicant organization should also describe the response to and management of a significant volume of queries and applications and proposed ideas to ensure diversity. The recipient organization will also work closely with ECA to publicize the achievements of the students attending these institutes. The applicant organization should provide information on successful media outreach campaigns it has conducted in the past. Please refer to the PSI for additional guidance.

Other Notes: All materials and correspondence related to the program will acknowledge it as a program of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. ECA will retain copyright use of and be allowed to distribute materials related to this program as it sees fit.

Planning Meeting: The recipient organization will be responsible for convening a planning meeting for all institute directors and relevant ECA staff. This planning meeting should occur in Washington, DC in the winter of 2009/2010.

The planning meeting is intended to develop common elements and consistency of standards across all institutes. Among the agenda items will be presentations by each recipient organization of their preliminary plans for the proposed institute(s), especially contact hours of language instruction. Planned cultural activities that include language-learning components should also be presented. Issues related to student placement, testing, and evaluation should also be discussed. The recipient organization for Component A should present on the plan for recruitment and selection of all participants.

This meeting should be planned in close consultation with ECA.

Component B: Administration and Implementation of Institutes

Through these institutes, undergraduate and graduate students from the United States will spend six to ten weeks on programs abroad in the summer of 2010. Since there is an emphasis on substantial progress in foreign language advancement, applicant organizations need to explain clearly the utility and advantages when proposing programs of approximately six weeks. The CLS institutes will provide intensive language instruction in a classroom setting, and should also provide language-learning opportunities through immersion in the cultural, social, and educational life of the partner country. The program should enhance the participants' knowledge of the host country's history, culture, and political system as these support language learning. Language study must be the primary focus of the program.

Applicant organizations should submit a proposal for administration of one or more of the language groups. Funding requested in proposals for the administration of all language groups should not exceed $9,650,000. Average participant costs per language group should not exceed $16,000.

Expected Program Results:

- Participants will demonstrate a substantive, measurable increase in language proficiency (verified through testing).
- Participants will demonstrate a deeper understanding of the host country's society, institutions, and culture.
- Alumni will continue their foreign language study, apply their linguistic skills in their chosen career fields, and/or participate in other exchanges where the language they have studied is spoken.

Capacity of Administering Organization: U.S. applicant organizations or consortia must have the necessary capacity in the partner country or countries to implement the program through either their own offices or partner institutions. Organizations may demonstrate their organization's direct expertise, or they may partner with other organizations to best respond to the requirements outlined in this RFGP. Organizations that opt to work with sub-award arrangements should clearly outline all duties and responsibilities of the partner organization, preferably in the form of sub-award agreements and accompanying budgets.

Organizations or consortia applying for this award must demonstrate their capacity for conducting projects of this nature, focusing on three areas of competency: (1) Provision of foreign language instruction programs and provision of educational and cultural activities as outlined in this document; (2) language level-appropriate programming for the target audience; and (3) experience in conducting programs in the proposed partner country or countries. Applicant organizations must present a proposal that clearly indicates the building of new and increased institutional language study capacity overseas for these summer institutes.

Institute Information: Each six-to ten-week overseas summer institute for undergraduate and graduate students should focus on language study and should include four to six hours per day of formal and informal language training. The recipient organization(s) should provide multiple levels (beginning to advanced) of language instruction. While teaching conversational vocabulary will be necessary to help students function in their immersion setting, classes should also provide formal instruction in grammar, vocabulary, and pronunciation, as well as covering speaking, listening, reading, and writing, including non-Roman alphabets.

The institutes should also include a secondary cultural immersion component designed to reinforce language learning with planned excursions, which give the students the opportunity to participate in activities designed to teach them about community life and the culture and history of the host country. The program activities should enhance the participants' understanding of

contemporary society, culture, media, political institutions, ethnic diversity, history, and environment of the host country. All these activities should incorporate a language component.

Staff should be physically present and available to support the participants throughout the institute.

The Bureau reserves the right to make changes in eligible countries for programming based on safety and security or other concerns.

Country and Language Information: Near East and North Africa Region

For Arabic language institutes: Applicant organizations should describe plans for not less than a total of 185 participants in the Arabic language institutes. Arabic language instruction should be available for three levels of students: advanced beginning, intermediate, and advanced. Approximately 120 of the participants should receive instruction at the intermediate/advanced levels while the rest should receive elementary level instruction. The proposed institutes should make explicit accommodation for learners of varying skill levels.

Classroom instruction should emphasize Modern Standard Arabic with class time devoted also to colloquial Arabic, as appropriate. Students should also gain knowledge of colloquial Arabic through informal study and through interaction with their host community.

Some previous study of the language—at least equivalent to an academic year—is required for participants in the elementary Arabic institutes. Participants in the intermediate/advanced Arabic institutes will have already studied the language formally for at least two years by the start of the summer program. The recipient organization should devise a plan to test all students prior to placement to determine the appropriate level of instruction.

Applicant organizations should plan to place students in a country or countries in North Africa, the Middle East, or the Gulf region, with the exception of Algeria, Iraq, Israel, Libya, Lebanon, Saudi Arabia, and Yemen. Applicant organizations should not plan to place students in the West Bank or Gaza.

East Asia and Pacific Region

For Chinese language institutes: Applicant organizations should describe plans for not less than a total of 80 participants in the Chinese language institutes. Chinese language instruction should be available for two levels of students: intermediate and advanced. The proposed institutes should make explicit accommodation for learners of varying skill levels.

Chinese instruction should be in Mandarin only. Teaching materials used in the program should be available in both simplified and traditional character versions. The Hanyu pinyin romanization system should be used.

Participants in the intermediate/advanced Chinese institutes will have already studied the language formally for at least two years by the start of the summer program. The recipient organization should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in the People's Republic of China (mainland China) for study.

For Indonesian language institutes: Applicant organizations should describe plans for not less than a total of 15 participants in the Indonesian language institutes. Indonesian language instruction should be available for three levels of students: beginning, intermediate, and advanced. Eight of the participants should receive instruction at the intermediate/advanced level while the rest should receive beginning level instruction. The proposed institute should make explicit accommodation for learners of varying skill levels.

No prior study of the language is required for participants in the beginning Indonesian institutes. Participants in the intermediate/advanced Indonesian institutes will have already studied the language formally for at least two years by the start of the summer program. The recipient organization should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in Indonesia.

For Japanese language institutes: Applicant organizations should describe plans for not less than a total of 30 participants in the Japanese language institutes. Japanese language instruction should be available for two levels of students: intermediate, and advanced. The proposed institutes should make explicit accommodation for learners of varying skill levels.

Participants in the intermediate/advanced Japanese institutes will have already studied the language formally for at least two years by the start of the summer program. The institutes should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in Japan. Location of the institutes should be in a city other than Tokyo in order to maximize language-learning immersion opportunities.

For Korean language institutes: Applicant organizations should describe plans for not less than a total of 30 participants in the Korean language institutes. Korean language instruction should be available for three levels of students: beginning, intermediate, and advanced. Ten of the participants should receive instruction at the intermediate/advanced level while the rest should receive beginning level instruction. The proposed institutes should make explicit accommodation for learners of varying skill levels.

The Hangeul alphabet system should be used. Students should also be introduced to NAKL.

No prior study of the language is required for participants in the beginning Korean institutes. Participants in the intermediate/advanced Korean institutes will have already studied the language formally for at least two years by the start of the summer program. The recipient organization should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in South Korea. Location of the institutes should be in a city other than Seoul in order to maximize language-learning immersion opportunities.

Europe and Eurasia Region

For Azerbaijani language institute: Applicant organizations should describe plans for not less than a total of eight participants in the Azerbaijani language institute. Azerbaijani language instruction should be available for two levels of students: intermediate, and advanced. The proposed institutes should make explicit accommodation for learners of varying skill levels, as well as for a potential bridge course for Turkish speakers who wish to learn Azerbaijani.

Participants in the intermediate/advanced Azerbaijani institute will have already studied the language formally for at least two years by the start of the summer program. Students who have studied Turkish formally for at least two years by the start of the summer program may also be considered. The recipient organization should devise a plan to test intermediate/advanced students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in Azerbaijan.

For Russian language institutes: Applicant organizations should describe plans for not less than a total of 80 participants in the Russian language institutes. Russian language instruction should be available for two levels of students: intermediate and advanced. The proposed institutes should make explicit accommodation for learners of varying skill levels.

Participants in the intermediate/advanced Russian institutes will have already studied the language formally for at least two years by the start of the summer program. The recipient organization should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in Russia. Location of the institutes should be in a city other than Moscow or St. Petersburg in order to maximize language-learning immersion opportunities.

For Turkish language institutes: Applicant organizations should describe plans for not less than a total of 55 participants in the Turkish language institutes. Turkish language instruction should be available for three levels of students: beginning, intermediate, and advanced. Thirty-five of the participants should receive instruction at the intermediate/advanced level while the rest should receive beginning level instruction. The proposed institutes should make explicit accommodation for learners of varying skill levels.

No prior study of the language is required for participants in the beginning Turkish institutes. Participants in the intermediate/advanced Turkish institutes will have already studied the language formally for at least two years by the start of the summer program. The recipient organization should devise a plan to test intermediate/advanced students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in Turkey. Location of the institutes should be in a city other than Istanbul in order to maximize language-learning immersion opportunities.

South Central Asia Region

For Indic language institutes: Applicant organizations should describe plans for not less than a total of 72 participants in the Indic language institutes. Instruction should be available for each of these Indic languages: Bangla/Bengali, Hindi, Punjabi, and Urdu. For these language institutes, not less than 18 students should learn Bengali/Bangla, not less than 18 Hindi, not less than 18 Punjabi, and not less than 18 Urdu. All Indic language instruction should be available for three levels of students: beginning, intermediate, and advanced. Overall, 36 of the participants should receive instruction at the intermediate/advanced level while the rest should receive beginning level instruction. The proposed institutes should make explicit accommodation for learners of varying skill levels.

No prior study of the language is required for participants in the beginning Indic institutes. Participants in the intermediate/advanced Indic institutes will have already studied the relevant language formally for at least two years by the start of the summer program. The recipient organization should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in Bangladesh and/or India.

For Persian language institutes: Applicant organizations should describe plans for not less than a total of 20 participants in the Persian language institutes. Persian language instruction should be available for two levels of students: intermediate, and advanced. The proposed institutes should make explicit accommodation for learners of varying skill levels.

Participants in the intermediate/advanced Persian institutes will have already studied the language formally for at least two years by the start of the summer program. The institutes should devise a plan to test all students prior to placement to determine what level of instruction should be received.

Applicant organizations should plan to place students in a site outside of Iran for the study of Persian.

Orientations: Recipient organization(s) will organize substantive, in-person, pre-departure orientations for all participants. Working in consultation with ECA, the orientation should include a security briefing on the host country. The orientations must take place in Washington, DC. Comprehensive information packets should be provided, preferably online, well in advance of the orientation to all participants. A sample of the contents of these packets should be provided under Tab E.

Recipient organization(s) may also organize substantive orientation for participants on arrival in the host country. The recipient organization(s) may also need to work in consultation with ECA and the U.S. Embassy in the host country to arrange an in-country security briefing to be conducted by the Embassy's Regional Security Officer.

At the end of each language program, the recipient organization(s) will organize an in-country closing workshop for the students prior to departure from their host country, which will focus on summarizing the experience, completing an evaluation, language testing, developing plans for activities at home, and preparing for re-entry.

Project Activities: Describe in detail the major components of the program, including project planning; the host venues; orientations (U.S. and overseas); assessment and testing; language instruction; educational enrichment activities; cultural activities; participant monitoring; and logistics.

Assessment and Testing: Standardized pre- and post-institute testing should be done to determine participants' language proficiency and progress.

Pre- and post-testing should measure the student's advancement in language learning. ECA will work with the recipient organization(s) to develop and implement an instrument to measure students' increased language proficiency due to participation in this program. The data should be analyzed and reported by the recipient organization(s) to ECA for the program, disaggregated by institute.

Alumni Tracking and Follow-On Activities: Alumni activities are an important part of ECA's academic exchange programs. Alumni programming in the form of newsletters and listservs provides critical program follow-on and maximizes and extends the benefit of the participants' program. Please refer to the PSI for additional guidance on alumni outreach and follow-on engagement.

ECA maintains the *alumni.state.gov* Web site for all of its exchange program participants. The CLS Program maintains an online community through this global Web site. The recipient organization(s) will also be responsible for maintaining this community on behalf of the CLS Program.

The applicant organization is strongly urged to outline how it will creatively organize and financially support alumni activities at a minimal cost to ECA.

ECA/A/E Involvement: In a Cooperative Agreement, ECA/A/E is substantially involved in program activities above and beyond routine award monitoring. ECA/A/E activities and responsibilities for this program are as follows:

Component A: Participant Recruitment and Selection.

(1) Review all print and online materials regarding the institutes before publication and dissemination.

(2) Review and approve the recruitment strategy.

(3) Work with the recipient organization to publicize the program through various media outlets.

(4) Review and approve application forms.

(5) Participate in selection committees.

(6) Confirm final selection of principal and alternate candidates.

Component B: Administration and Implementation of Institutes.

(1) Review all print and online materials regarding the institutes before publication and dissemination. This review also includes individual institute's instructional materials and cultural activities, which must be provided to ECA at least two months in advance of the start of the institute.

(2) Review and approve participant award documentation, including Terms and Conditions.

(3) Work with recipient organization(s) to plan and implement participant pre-departure orientations.

(4) Work with recipient organization(s) to offer standardized pre- and post-institute testing of participants' language proficiency and progress.

(5) Review project activity schedules for all institutes.

(6) Monitor the progress of the recipient organization(s) at each stage of the project's implementation through timely updates.

(7) Provide Bureau-approved evaluation surveys for completion by participants after completion of program.

(8) Provide substantive input on alumni activities and follow-up events.

Funding: Award funding for Component A involving recruitment, selection, and the directors' meeting will cover costs associated with this component, not exceeding $350,000. Award funding for Component B involving administration and implementation of the institutes will support costs including testing, orientation, travel, tuition and maintenance costs, educational enhancements, cultural and social activities, health benefits coverage, alumni activities, and administrative costs. This element should not exceed $9,650,000 overall. Average participant costs per language group should not exceed $16,000.

Though not directly applicable to this program, programs must comply with J–1 visa regulations. Please refer to the Project Objectives, Goals, and Implementation (POGI) document and the Proposal Submission Instructions for further information.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2010.

Approximate Total Funding: $10,000,000.

Approximate Number of Awards: 2 or more.

Ceiling of Award Range: $9,650,000.

Floor of Award Range: $350,000.

Anticipated Award Date: Pending availability of funds, the proposed start date is October 1, 2010.

Anticipated Project Completion Date: Approximately 14 to 18 months after the start date, depending on the proposed program plan.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement 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 award 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 that 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: 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 awarding two or more cooperative agreement awards in an amount over $60,000 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.

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 Academic Exchange Programs (ECA/A/E), Room 234, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 453–8135, Fax (202) 453–8125, E-mail: *ManleyHL@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/A/E–10–01) 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.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Bureau Special Projects Officer Heidi Manley and refer to the Funding Opportunity Number 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 form that is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Applicant organizations bidding on two or more language groups should submit one proposal for administration and implementation of the language institutes and a separate proposal for recruitment and selection of all participants. Each proposal should contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) 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

Although not applicable to this competition, the Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of 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.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

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. Each applicant organization must plan to use three surveys through the Bureau's E-GOALS system, in addition to any surveys of its own. 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, 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 to the Bureau upon request.

Additional guidance on using the Bureau's E-GOALS system for evaluation is located in the POGI.

IV.3d.4. Describe in your proposal your plans for: overall program management, staffing, coordination with ECA and with overseas institutes enrolling clusters of students, testing, orientation, and cultural enrichment opportunities for students. If bidding on two or more language groups, also indicate your plans for recruitment and selection. Please provide a staffing plan that outlines the responsibilities of each staff person and explains which staff members will be accountable for each program responsibility.

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. Applicants must submit a comprehensive budget for the entire program.

Budget requests for administration of both Component A and B may not exceed $10,000,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should also provide copies of any sub-award agreements that would be implemented under terms of this award.

IV.3e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the POGI and the PSI documents in the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods Of Submission:

Application Deadline Date: July 10, 2009.

Reference Number: ECA/A/E–10–01.

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., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via 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, one fully-tabbed copy, and eight copies of the application with Tabs A–E (for a total of ten copies) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E–10–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

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 a PC-formatted disk. The Bureau will provide these files electronically to the appropriate 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 strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package.

As stated in this RFGP, ECA bears no responsibility for 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 awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below:

(1) Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and the purposes outlined in this solicitation. Proposals should demonstrate how students would be monitored and trained, and also how they will be supported as alumni. If bidding on two or more language groups, proposals should also show how students would be recruited and selected. The level of creativity, resources, and effectiveness will be primary factors for review.

(2) Program Planning and Ability to Meet Program Objectives: Proposals should clearly demonstrate an understanding of the program's priorities and how the organization will achieve them through objectives that are reasonable, feasible, and flexible. The Narrative should address all of the items in the Statement of Work and Guidelines described above. A detailed agenda and relevant work plan should demonstrate organizational competency and logistical capacity. Agenda and plan should adhere to the program overview, timetable and guidelines described in this solicitation. The substance of the instruction and the exchange activities should be described in detail and included as an attachment. The responsibilities of partner organizations will be clearly delineated.

(3) Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity 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). Proposals should articulate a diversity plan, not just a statement of compliance.

(4) Follow-on/Alumni Activities: Proposals should provide a plan for continued contact with returnees to ensure that they are tracked over time, utilized and/or organized as alumni, and provided opportunities to reinforce the knowledge and skills they acquired on the exchange and share them with others. Proposals should provide a strategy for maximizing the opportunities for alumni to further their study of the language and culture of the host country, presenting plans that are within the context of the grant (with Bureau support) and after its completion (without the Bureau's financial

support). Please refer to the PSI for additional guidance on alumni outreach and follow-on engagement.

(5) Institutional Capacity: Applicant organizations should demonstrate knowledge of each country's educational environment and the capacity for hosting this language institute. Proposals should include detailed information about the applicant organization's capacity in the United States and about in-country support for the program, including descriptions of experienced personnel who will implement it. Institutional resources should be adequate and appropriate to achieve the project's goals. Proposals should demonstrate an institutional record of successful exchange programs. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(6) Program Evaluation: Proposals should include a plan and methodology to evaluate the program's successes and challenges, both as the activities unfold and at the end of the program. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a description of performance indicators and measurement tools. Applicant organizations will indicate their willingness to submit periodic progress reports in accordance with the program office's expectations. The final project evaluation should provide qualitative and quantitative data about the project's influence on the participants' long-term language-learning goals.

(7) Cost-Effectiveness/Cost-Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. While lower ''per participant'' figures will be favorably viewed, the Bureau expects all figures to be realistic. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through institutional direct funding contributions, as well as other private sector support. Proposals should demonstrate a quality, cost-effective program. Proposals that demonstrate a significant reduction to per participant costs will be determined to be more competitive.

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 an 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 two copies 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 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.

(4) Interim program and financial reports that include information on the progress made on the program plan and program results to date.

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. Program Data Requirements: Organizations awarded grants 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 grant or who benefit from the grant 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: Heidi Manley, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, ECA/A/E–10–01, U.S. Department of State, SA–44, 301 4th Street, SW., Room 234, Washington, DC 20547, Telephone (202) 453–8135, Fax (202) 453–8125, E-mail: *ManleyHL@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E–10–01.

Please read the complete **Federal Register** 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. In addition, it reserves the right to accept proposals in whole or in part and to make an award or awards in the best interest of the program. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 18, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–12416 Filed 5–27–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6641]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dalou in England: Portraits of Womanhood, 1871–1879''

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 objects to be included in the exhibition ''Dalou in England: Portraits of Womanhood, 1871–1879,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, CT, from on or about June 10, 2009, until on or about August 23, 2009, 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 list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 22, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–12453 Filed 5–27–09; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Initiation of the 2009 Annual GSP Product and Country Eligibility Practices Review and Deadlines for Filing Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation for public petitions.

SUMMARY: This notice announces that the Office of the United States Trade Representative (USTR) will receive petitions in 2009 to modify the list of products that are eligible for duty-free treatment under the GSP program and to modify the GSP status of certain GSP beneficiary developing countries because of country practices. This notice determines that the deadline for submission of country practice petitions for the 2009 Annual GSP Product and Country Eligibility Practices Review is 5 p.m., Wednesday, June 24, 2009. This notice further determines that the deadline for submission of product petitions, other than those requesting competitive need limitation (CNL) waivers or section 503(c)(1)(E) determinations regarding products not produced in the United States on January 1, 1995, is 5 p.m., Wednesday, June 24, 2009. The deadline for submission of petitions requesting CNL waivers and 503(c)(1)(E) determinations regarding products not produced in the United States on January 1, 1995 is 5 p.m., Tuesday, November 17, 2009. The lists of product petitions and country practice petitions accepted for review will be announced in the **Federal Register** at later dates.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room F–214, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov*.

Public versions of all documents relating to this review will be made available for public viewing at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date. Public versions of the petitions submitted for the June 24, 2009, deadline will be available in docket USTR–2009–0015 at *http://www.regulations.gov.*

I. 2009 Annual GSP Review

The GSP regulations (15 CFR part 2007) provide the timetable for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2009 Annual GSP Product and Country Practices Eligibility Review, all petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Wednesday, June 24, 2009. Petitions requesting CNL waivers and 503(c)(1)(E) determinations regarding products not produced in the United States on January 1, 1995, must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Tuesday, November 17, 2009, in order to be considered in the 2009 Annual Review. Petitions submitted after the respective deadlines will not be considered for review.

GSP Product Review Petitions

Interested parties, including foreign governments, may submit petitions to: (1) Designate additional articles as eligible for GSP benefits, including to designate articles as eligible for GSP benefits only for countries designated as least-developed beneficiary developing countries, or only for countries designated as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA); (2) withdraw, suspend or limit the application of duty-free treatment accorded under the GSP with respect to any article, either for all beneficiary developing countries, least-developed beneficiary developing countries or beneficiary sub-Saharan African countries, or for any of these countries individually; (3) determine whether a like or directly competitive product was produced in the United States on January 1, 1995, for the purposes of section 503(c)(1)(E); (4) waive the ''competitive need limitations'' for individual beneficiary developing countries with respect to specific GSP-eligible articles (these limits do not apply to either least-developed beneficiary developing countries or AGOA beneficiary sub-Saharan African countries); and (5) otherwise modify GSP coverage.

As specified in 15 CFR 2007.1, all product petitions must include a detailed description of the product and the 8-digit subheading of the Harmonized Tariff Schedule of the United States (HTSUS) under which the product is classified.

Further, product petitions requesting CNL waivers for GSP-eligible articles from beneficiary developing countries that exceed the CNLs in 2009 as well as 503(c)(1)(E) determinations regarding whether a like or directly competitive product was produced in the United States on January 1, 1995, must be filed in the 2009 Annual Review. In order to allow petitioners an opportunity to review additional 2009 U.S. import statistics, these petitions may be filed after Wednesday, June 24, 2009, but must be received on or before the Tuesday, November 17, 2009, deadline described above in order to be considered in the 2009 Annual Review. Copies will be made available for public inspection at *http://www.regulations.gov* after the November 17, 2009, deadline.

Country Practices Eligibility Review Petitions

Any person may submit petitions to review the designation of any beneficiary developing country, including any least-developed beneficiary developing country, with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)). Petitions to review the designation of beneficiary sub-Saharan African countries are considered in the Annual Review of the AGOA, a separate administrative process not governed by the GSP regulations.

II. Requirements for Submissions

All submissions for the GSP Product and Country Practices Eligibility Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are reprinted in the ''U.S. Generalized System of Preferences Guidebook'' (''GSP Guidebook''), available at: *http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file666_8359.pdf*.

Any person or party making a submission is strongly advised to review the GSP regulations. A model petition format is available from the GSP Subcommittee and is included in the GSP Guidebook. Petitioners are requested to use this model petition format so as to ensure that all information requirements are met. Submissions in response to this notice, with the exception of business confidential submissions, must be submitted electronically using *http://www.regulations.gov,* docket number USTR–2009–0015. Hand-delivered submissions will not be accepted. Submissions must be submitted in English to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, by the applicable deadlines set forth in this notice. Submissions that do not provide the information required by sections 2007.0 and 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required.

To ensure their most timely and expeditious receipt and consideration, petitions provided in response to this notice, with the exception of business confidential submissions, must be submitted online at *http://www.regulations.gov.* To make a submission using *http://www.regulations.gov,* enter docket number USTR–2009–0015 on the home page and click ''go.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''General Comments'' field or by attaching a document. Submissions must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Given the detailed nature of the information sought by the GSP Subcommittee, it is expected that most comments and submissions will be provided in an attached document. When attaching a document, type (1) The eight-digit HTSUS subheading number, and (2) ''See attached'' in the ''General Comments'' field on the online submission form, and indicate on the attachment whether the document is a ''Country Practice Review Petition'' or ''Product Review Petition for [HTSUS Subheading Number], [Product Name], and, if pertinent, [Country].''

Submissions must include at the beginning of the submission, or on the first page (if an attachment), the following text (in bold and underlined): (1) ''2009 GSP Annual Review''; and (2) for product petitions, the eight-digit HTSUS subheading number in which the product is classified; for country practice petitions, the name of the country. Furthermore, interested parties submitting petitions that request action with respect to specific products should also list at the beginning of the submission, or on the first page (if an attachment) the following information: (1) The requested action; and (2) if applicable, the beneficiary developing country.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov.* The confirmation should be kept for the submitter's records. USTR is not responsible for any delays in a submission due to technical difficulties, nor is it able to provide any technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program to arrange for an alternative method of transmission.

Business Confidential Petitions

Persons wishing to submit business confidential information must submit that information by electronic mail to *FR0807@ustr.eop.gov.* Business confidential submissions will not be accepted at *http://www.regulations.gov.* For any document containing business confidential information submitted as a file attached to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC.'' The ''BC'' should be followed by the name of the party (government, company, union, association, etc.) that is making the submission.

Persons wishing to submit business confidential submissions must also follow each of these steps: (1) Provide a written explanation of why the information should be protected in accordance with 15 CFR 2007.7(b), which must be submitted along with the business confidential version of the submission; (2) clearly mark the business confidential submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the submission; (3) indicate using brackets what information in the document is confidential; and (4) submit a non-confidential version of the submission, marked ''Public'' at the top and bottom of each page, that also indicates, using

asterisks, where business confidential information was redacted or deleted from the applicable sentences to *http://www.regulations.gov.* Business confidential submissions that are submitted without the required markings, or are not accompanied by a properly marked non-confidential version, as set forth above, might not be accepted or may be considered public documents. The non-confidential summary will be placed in the docket and open to public inspection.

III. Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted ''business confidential'' status under 15 CFR 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date. Such submissions may be viewed by entering the docket number USTR–2009–0015 in the search field at: *http://www.regulations.gov.*

Marideth Sandler,

Executive Director, GSP Program, Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. E9–12406 Filed 5–27–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0112]

Agency Information Collection (IC) Activities; Extension of a Currently Approved Collection: Training Certification for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval, and invites public comment. The FMCSA requests approval to extend an ICR entitled, ''Training Certification for Entry-Level Commercial Motor Vehicle Operators.'' There is no change from the burden estimate approved by OMB on March 11, 2008.

DATES: We must receive your comments on or before July 27, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2009–0112 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., e.t. Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., e.t. Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting them on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19476). This information is also available at *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001. Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*) established national minimum testing and licensing standards for operators of large trucks and buses. Congress sought to ensure that drivers of large trucks and buses possessed the knowledge and skills necessary to operate these vehicles. The CMVSA established the ''Commercial Drivers License'' (CDL) program and directed the Federal Highway Administration (FHWA), FMCSA's predecessor agency, to establish minimum Federal standards that States must meet when licensing CMV drivers. The CMVSA applies to most operators of CMVs in interstate or intrastate commerce, including employees of Federal, State and local governments.

Section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991) directed the FHWA to ''commence a rulemaking proceeding on the need to require training of all entry-level drivers of CMVs.'' On June 21, 1993, the FHWA published in the **Federal Register** an advance notice of proposed rulemaking entitled, ''Commercial Motor Vehicles: Training for All Entry Level Drivers'' (58 FR 33874). The Agency also began a study of the effectiveness of the training of entry-level drivers by the private sector. The results of the study were published in 1997 under the title ''Adequacy of Commercial Motor Vehicle Driver Training,'' and are available in FMCSA Docket 1997–2199. The study found that the heavy truck, motor coach, and school bus segments of the industry were not providing adequate entry-level training.

On August 15, 2003, FMCSA published a notice of proposed rulemaking (NPRM) entitled, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (68 FR 48863). The Agency proposed mandatory training for operators of CMVs in four areas: Driver qualifications, hours-of-service of drivers, driver wellness and whistle-blower protection. Training in these topics was not required at that time, and the Agency believed that knowledge of these areas was crucial to CMV safety. On May 21, 2004, FMCSA published a final rule with the same title as the NPRM (69 FR 29384). The Agency mandated training for all CDL operators in the four subject areas, effective July 20, 2004, despite litigation over the final rule in the U.S. Court of Appeals for the D.C. Circuit. While the court ordered a remand so the Agency could review the matter, the court did not vacate the rule.

Consequently, the final rule is currently in effect (*Advocates for Highway and Auto Safety* v. *Federal Motor Carrier Safety Administration,* 429 F. 3d1136 (D.C.Cir. 2005).

Title: Training Certification for Entry-Level Commercial Motor Vehicle Operators

OMB Control Number: 2126–0028.

Type of Request: Extension of an IC.

Respondents: Entry-level CDL drivers.

Estimated Number of Respondents: 45,611.

Estimated Time per Response: 10 minutes.

Expiration Date: September 30, 2009.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 7,602 hours. FMCSA estimates that an entry-level driver requires approximately 10 minutes to complete the tasks necessary to comply with the regulation. Those tasks are: Photocopying the training certificate, giving the photocopy to the motor carrier employer, and placing the original of the certificate in a personal file. Therefore, the annual burden for all entry-level drivers is 7,602 hours [45,611 respondents × 10 minutes/60 minutes to complete a response = 7,601.8 hours (rounded to 7,602 hours)].

Definitions: ''Commercial Motor Vehicle (CMV)'': A motor vehicle operated in commerce and having a gross vehicle weight rating of 26,001 pounds or more, regardless of actual weight, or designed to transport 16 or more passengers, or used to transport placardable and dangerous hazardous materials (49 CFR 383.5). The term ''CMV'' is limited to this definition in this document; the term ''CDL driver'' is used because the operators of these CMVs are required to have a valid commercial driver's license (CDL). This rule currently applies solely to ''entry-level'' CDL drivers, i.e., those who have less than one year of experience operating a CMV (49 CFR 380.502(b)).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance of functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: May 20, 2009.

David T. Anewalt,

Acting Associate Administrator, Research and Information Technology.

[FR Doc. E9–12326 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Terminal Railroad Association of Saint Louis

(Waiver Petition Docket Number FRA–2009–0026)

The Terminal Railroad Association of Saint Louis (TRRA) seeks a permanent waiver of compliance with the *Locomotive Safety Standards,* 49 CFR 229.21(a), as it pertains to the record keeping requirement for locomotive daily inspection reports. If their request is granted, TRRA will file the required report electronically in a secure centralized database that would be set up to track and store the daily inspection records for the required 92 days. The railroad states that each employee performing the inspections would be provided a unique electronic identification which will be utilized in place of the signature. All requirements, date, time location, person conducting inspection, and any non-complying conditions will be reported electronically. TRRA utilizes an onboard record of daily inspection and will continue to do so if their request is granted.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0026) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC, on May 20, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–12327 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Project Number STP–0022–01 (059)]

Environmental Impact Statement: Harrison, Jackson, Stone, Perry, George, and Greene Counties, MS

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Revision to the Original Notice of Intent.

SUMMARY: The Federal Highway Administration is issuing this revised

Notice of Intent to advise the public of changes to the logical termini for the Environmental Impact Statement that will be prepared to study improvements to State Route 15/State Route 57 to provide a four-lane facility beginning in the vicinity of the State Route 67/I–110 Interchange in Harrison County, Mississippi and terminating on State Route 15 north of Beaumont, Mississippi, a distance of approximately 61 miles. The original Notice of Intent for this project appeared in the July 17, 2008 **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Dickie Walters, Environmental Protection Specialist, Federal Highway Administration, 666 North Street, Suite 105, Jackson, MS 39202–3199, Telephone: (601) 965–4217. Contacts at the State and local level, respectively are: Mr. Claiborne Barnwell, Environmental/Location Division Engineer, Mississippi Department of Transportation, P.O. Box 1850, Jackson, MS 39215–1850, telephone: (601) 359–7920; and Mr. Steven Twedt, District 6 Engineer, Mississippi Department of Transportation, 6356 Highway 49 North, Hattiesburg, MS 39403–0551, telephone (601) 544–6511.

SUPPLEMENTARY INFORMATION: The FHWA, Mississippi Division Office will serve as the lead Federal agency for this project while the Mississippi Department of Transportation (MDOT) will serve as joint lead agency. The FHWA, in cooperation with MDOT, will prepare an Environmental Impact Statement (EIS) to study potential improvements to State Route 15/State Route 57 (SR 15/SR 57) in order to provide a four-lane facility. This approximately 61-mile long corridor has logical termini near the State Route 67/I–110 interchange in Harrison County and on State Route 15 north of Beaumont, MS in Perry County. The termini on the southern end of the project is a change from the original southern termini which began in the vicinity of Ramsey Springs, MS and was identified in the original Notice of Intent for this project which appeared in the July 17, 2008 **Federal Register**. The purpose of the EIS is to address the transportation, environmental, and safety issues of such a transportation corridor. The transportation facility will greatly enhance hurricane evacuation from the Mississippi Gulf, provide a new four-lane facility, and meet legislative intent. Alternatives under consideration include (1) taking no action and (2) build alternatives. The FHWA and MDOT are seeking input as a part of the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, Native American tribes, private organizations and citizens who have previously expressed or are known to have interest in this proposal. Another formal scoping meeting with Federal, State, and local agencies, and other interested parties will be held in the near future. Public involvement meetings will be held during the EIS process. The draft EIS will be available for public and agency review and comment prior to the official public hearing. To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Dated: May 21, 2009.

Donald E. Davis,

Federal Highway Administration, Assistant Division Administrator, Mississippi Division, Jackson, Mississippi.

[FR Doc. E9–12387 Filed 5–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation of claims for judicial review of actions by FHWA.

SUMMARY: This notice announces action taken by the FHWA that is final within the meaning of 23 U.S.C. 139(l)(1). This notice announces the availability of a Record of Decision (ROD) by FHWA pursuant to the requirements of the National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. 4321, as amended and the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508). This action relates to a proposed project in King County Washington, the SE Issaquah Bypass Project.

DATES: By this notice, the FHWA is advising the public of a final agency action subject to 23 U.S.C. 771 and 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the highway project will be barred unless the claim is filed on or before November 24, 2009. If the Federal law that authorizes that judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Sharon P. Love, Environmental Program Manager, Federal Highway Administration Washington Division, 711 S. Capitol Way Suite 501, Olympia, WA 98501; phone: (360) 753–9558; fax: (360) 753–9889; and e-mail: *Sharon.Love@dot.gov.* For the City of Issaquah: Mr. Bob Brock, PO Box 1307, Issaquah, WA 98027–1307; phone: (425) 837–3405; and e-mail: *bobb@ci.issaquah.wa.us.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing a Record of Decision (ROD) for the following highway project in the State of Washington: SE Issaquah Bypass, City of Issaquah, and King County. The Selected alternative is the no-build alternative.

The final environmental impact statement (FEIS) for the project was released January 4, 2008. At the time the FEIS was published, the Federal Highway Administration (FHWA), the Washington State Department of Transportation (WSDOT), and the city of Issaquah identified selected Modified Alternative 5 as the preferred course of action for building a new 1.9-kilometer (1.1-mile) four-lane principal arterial between Interstate 90 (I–90) and Front Street South in Issaquah, Washington. The proposed new arterial is commonly referred to as the Southeast Issaquah Bypass.

The Issaquah City Council passed a motion on February 4, 2008, Agenda Bill 5562, stating the ''Issaquah City Council recommends that the Southeast Issaquah Bypass Alternative 7, the No-Action Alternative, be selected for the Record of Decision.''

Out of seven alternatives considered in the final EIS (including the no-action alternative), Modified Alternative 5 was determined to be the most desirable in terms of balancing social and economic impacts, impacts on the natural environment, transportation system performance, and cost. While FHWA supported the preferred alternative identified in the FEIS, it selected the No-Build alternative in the ROD due to the City Council's decision.

The actions by FHWA, and the laws under which the action was taken, are described in the Final Environmental Impact Statement for the project approved on January 4, 2008, in the FHWA Record of Decision (ROD) issued on January 26, 2009, and in other project records. The FEIS, ROD, and other documents in the FHWA project

file are available by contacting the FHWA or the City of Issaquah at the addresses provided above. The FHWA ROD can be viewed and downloaded at *http://www.ci.issaquah.wa.us/Files/Final_ROD_SEIssaquahBypass.pdf*.

This notice applies to all Federal agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Act [23 U.S.C. 109].
2. Air; Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*] Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].
6. Social and Economics: Civil Rights Act of 1964 [42 U.S.C 2000(d)–2000(d)(1)]; American Indians Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended [42 U.S.C. 61].
7. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [14 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [42 U.S.C. 401–406]; TEA–21 Wetland Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
8. Hazardous Materials: Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 9501–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource, Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].
9. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplains Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13112, Invasive Species; E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

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

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 21, 2009.

Sharon P. Love,

Environmental Program Manager, Olympia Washington.

[FR Doc. E9–12386 Filed 5–27–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Saul Ewing on behalf of Trinity Industries, Inc. (WB605–5—05/04/09) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–12313 Filed 5–27–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notice of Meeting

ACTION: Notification of Citizens Coinage Advisory Committee June 29, 2009 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for June 29, 2009.

DATES: June 29, 2009.

Time: 6:30 p.m. to 9 p.m.

Location: Gaylord Hall in the Worner Center, Campus of Colorado College, 902 N. Cascade Ave., Colorado Springs, CO 80903.

Subject: Review candidate designs for the 2010 Boy Scouts of America Centennial Commemorative Coin Act and the United States Mint Director Edmund C. Moy medal.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: May 22, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–12422 Filed 5–27–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee June 3, 2009 Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee June 3, 2009 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for June 3, 2009.

Date: June 3, 2009.

Time: 4 p.m. to 5:30 p.m.

Location: United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review candidate designs for the 2010 American Veterans Disabled for Life Commemorative Coin, and design options for the James Buchanan Liberty Obverse First Spouse Gold Coin for 2010; and discuss 2010 Lincoln cent obverse design.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: May 22, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–12425 Filed 5–27–09; 8:45 am]

BILLING CODE P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—June 11, 2009, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 11, 2009 to address ''The Implications of China's Naval Modernization on the United States.''

Background

This event is the sixth in a series of public hearings the Commission will hold during its 2009 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The June 11 hearing will examine PLA naval development and reforms, recent PLA Navy operational activities, technical aspects of China's naval modernization, and the strategic implications of these aspects on U.S. and allied nations' national security.

The June 11 hearing will be Co-chaired by Vice Chairman Larry Wortzel and Commissioner Peter Videnieks.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web Site *http://www.uscc.gov.*

Copies of the hearing agenda will be made available on the Commission's Web Site *http://www.uscc.gov* as soon as available. Any interested party may file a written statement by June 11, 2009, by mailing to the contact below. On June 11, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

DATE AND TIME: Thursday, June 11, 2009, 8:45 a.m. to 4 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web Site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenues, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: May 22, 2009.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E9–12484 Filed 5–27–09; 8:45 am]

BILLING CODE 1137–00–P

Federal Register
Vol. 74, No. 101
Thursday, May 28, 2009

Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–18 of May 19, 2009

Proposed Agreement for Cooperation Between the Government of the United States of America And the Government of the United Arab Emirates Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the United Arab Emirates Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 19, 2009

[FR Doc. E9–12582
Filed 5–27–09; 8:45 am]
Billing code 4710–10–P

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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H.R. 627/P.L. 111–24
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