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

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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC14

Common Crop Insurance Regulations; Dry Pea Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Dry Pea Crop Insurance Provisions by including the insurability of additional types of dry peas, by offering winter coverage, by allowing replanting payments, and by making chickpeas insurable under the Dry Pea Crop Provisions. The changes will apply for the 2009 and succeeding crop years for all Dry Pea counties with a contract change date on or after November 30, 2008.

DATES: *Effective Date:* This rule is effective October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to requiring the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to 7 CFR part 457.140 (Dry Pea Crop Insurance Provisions) that were published by FCIC

on January 18, 2008, as a notice of proposed rulemaking in the **Federal Register** at 73 FR 3411–3417. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 119 comments were received from five commenters. The commenters were one insurance services organization, one grower association, and three insurance providers.

The public comments received regarding the proposed rule and FCIC's responses to the comments are listed below (under applicable subject headings) identifying issues and concerns, and the changes made, if any, to address the comments.

General

Comment: One commenter stated contract seed peas and contract seed beans have their own unique method for properly calculating the actual production history (APH) as outlined in Exhibit 27 of the Crop Insurance Handbook (CIH). The commenter claims it has to track back and forth between dollars and pounds and receive 10 years of new Reference (Base) Year Adjustment Factors (RYAF) each year. All 10 numbers change every year. The commenter states that the intent of the procedure is good as it tries to provide coverage for contract seed peas that do not pass germination testing and, therefore, receive a reduced price. However, the commenter thought this could also be accomplished by using the same methodology as is used for green peas. This would simplify the administration of this program and remove the need for having Exhibit 27 of the CIH as the APH would be based on 'Dividing the dollar amount received by the contract price per pound for the base contract price.' Using the green pea methodology would allow the guarantee to be expressed in pounds rather than dollars and eliminate the need for RYAFs. The approved APH yield would no longer have to be converted from dollars per acre to pounds per acre for entry on the acreage report. The commenter states that this APH procedure has been in place only for contract seed pea types of dry peas and contract seed bean types of dry beans. The commenter recommended these procedures be reevaluated to see if they are still necessary and if this procedure could be revised to be consistent with what is being done for green peas. This would simplify the administration of this program.

Response: Since the recommended change involves APH procedure and not the Dry Pea Crop Provisions, no change has been made in the final rule. FCIC will evaluate this recommendation to determine if APH procedures for contract seed dry peas can be made consistent with seed green peas.

Comment: Two commenters applauded FCIC for including chickpeas (a.k.a. garbanzo beans) in the Dry Pea Crop Provisions. Chickpeas are produced in dry pea and lentil growing regions and producers should have the option to purchase coverage for these crops under one policy.

Response: FCIC has retained the provisions in the final rule that allow chickpeas to be covered under the Dry Pea Crop Provisions in applicable States and counties as determined by FCIC.

Comment: Two commenters stated the words ''fall planted'' and ''spring planted'' are most often used without hyphens throughout the Crop Provisions, though hyphens are used in the section 13(b) example. It would be helpful to be consistent, and preferably use the hyphens to make it easier to read.

Response: FCIC has revised the provisions as suggested.

Section 1—Definitions

Comment: One commenter recommended the definition of ''base price'' be revised to include both ''seed company'' and ''processor'' contracts because dry pea producers often have the choice to purchase seed from seed companies and processors.

Response: FCIC has revised the definition of ''base contract price'' to include processor contracts and now refers to ''processor/seed company contract.'' FCIC has also removed the definitions of ''seed company'' and ''seed company contract'' and replaced the definitions with ''processor/seed company'' and ''processor/seed company contract,'' respectively. Therefore, the phrases ''seed company'' and ''seed company contract'' have been replaced with the phrases ''processor/seed company'' and ''processor/seed company contract,'' respectively, throughout the policy to be consistent with the definition of ''base contract price.''

Comment: Two commenters recommended replacing the word ''place'' with ''places'' in the definition of ''combining.''

Response: FCIC has revised the definition as suggested.

Comment: One commenter supported the revision to the definition of ''dry peas'' to allow insurability of additional types of dry peas in accordance with the Special Provisions. Three commenters also stated the word ''and'' before the word ''Chickpeas'' in the definition of ''dry peas'' should be removed and replaced with a comma. Two commenters suggested rewording the phrase ''and those types'' to state ''and any other types.''

Response: FCIC has retained the provisions in the final rule, which allows insurability of additional types of dry peas via the Special Provisions. FCIC has removed the word ''and'' and replaced it with a comma. FCIC has reworded the phrase ''and those types'' as ''and other types.''

Comment: One commenter supported adding the sentence, ''dry peas that are swathed prior to combining are not considered harvested,'' in the definition of ''harvest.''

Response: FCIC proposed this change in the proposed rule and will retain it in the final rule.

Comment: One commenter supported revising the definition of ''local market price'' to specify that factors not associated with grading factors under the United States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered, unless specified in the Special Provisions.

Response: FCIC has retained the proposed definition in the final rule.

Comment: Two commenters asked, in the definition of ''practical to replant,'' if the added statement that it will not be considered practical to replant fall-planted dry peas more than 25 days after the final planting date for the corresponding spring-planted type of dry pea conflicts with the last sentence of 8(b), which states ''We will not require you to replant if it is not practical to replant the type of dry peas originally planted.'' The commenters also asked if fall-planted and spring-planted dry peas are different types or the same type planted at different times.

Response: The commenter is correct that the statement that fall-planted dry peas will not be considered practical to replant more than 25 days after the final planting date for the corresponding spring-planted type of dry pea conflicts with the last sentence of 8(b). FCIC has removed the referenced provisions of section 8(b). Fall-planted and spring-planted dry peas are different types planted at different times.

Comment: Two commenters suggested reformatting the definition of ''practical to replant'' so it is easier to read.

Response: FCIC has reformatted the definition of ''practical to replant'' to make it easier to read.

Comment: Three commenters suggested revising the definition of ''price election'' to change the term ''base price'' to ''base contract price'' to match the revised definition of ''base contract price.''

Response: FCIC has revised the definition as suggested.

Comment: One commenter suggested adding a definition of ''sales closing date'' to address the additional sales closing date that will be established for acreage insured under the Winter Coverage Option.

Response: A definition of ''sales closing date'' does not need to be added. Throughout the Dry Pea Crop Provisions, when reference is made to insurance attaching under the Winter Coverage Option, the Crop Provisions state the Winter Coverage Option must be elected by the sales closing date. Further, the Special Provisions will contain the sales closing date for counties with the Winter Coverage Option in effect. No change will be made.

Comment: One commenter stated the word ''variety'' in the definition of ''seed company contract'' has been changed to ''type.'' The commenter stated the contracts they have received in years past make specific reference to a variety of seed and not a specific type. The commenter asked if it will be considered an invalid contract if the seed company contracts do not state the specific type or if the contract states the specific variety whether the insurance provider can determine the type.

The commenter also asked the following questions: (1) With the proposed change to have the contract state a specific type, will separate units by each type of dry pea seed under contract be allowed; (2) will the Special Provisions be changed to identify each specific type that is insurable by type for contract seed or will the Special Provisions remain the same and all varieties of dry peas under contract for seed will be insured as the contract seed pea type.

Response: The commenter is correct that processor contracts and seed company contracts make specific reference to varieties, rather than types. Therefore, FCIC has not retained the proposed changes. This means that contract seed peas may be insured as a separate optional unit only if contract seed peas are listed on the Special Provisions as an insurable type. The distinct varieties listed on the contract will not be eligible for separate optional units.

Comment: Two commenters suggested revising the definition of ''swathed'' in order to align it with the wording of ''swathed'' in other Crop Provisions. In the proposed context, one may conclude and argue that placing the crop into more than one windrow would not be considered swathed.

Response: FCIC has revised the definition for clarification.

Section 2—Unit Division

Comment: Two commenters stated this section may need to be clarified as they are not sure how contract seed peas fit into the unit structure as defined in this section of the policy. The commenters asked if Austrian peas grown under a seed company contract and other Austrian peas not grown under a seed company contract in the same section would qualify for separate optional units.

Response: Section 2 has been revised to clarify that separate optional units can be established for contract seed peas and dry peas not grown under a processor/seed company contract even if each type shares a common variety, provided each type is grown on separate acreage and the production is kept separate. This means that Austrian peas grown under a processor/seed company contract and other Austrian peas not grown under a processor/seed company contract in the same section qualify for separate optional units, provided the Austrian peas grown under a processor/seed company contract meet all policy requirements for insurability as contract seed peas, and the producer has elected optional units. Austrian peas grown for harvest as mature dry peas would be insurable as either a: (1) Fall Austrian pea type; or (2) spring Austrian pea type, whichever is applicable, if provided on the Special Provisions, and all qualifying acreage of seed peas (regardless of type, e.g. fall Austrian peas, spring smooth green and yellow peas, etc.) would be insurable as a separate optional unit when insured as a contract seed pea type. If the acreage of Austrian peas grown under contract for seed did not meet the policy requirements to be insured under the contract seed pea type, then this acreage and acreage of Austrian peas not grown under contract would be included in the same unit.

Comment: Two commenters said the proposed rule appears to delete section 2(b), which currently allows optional units for contract seed peas if the seed contract specifies the number of acres contracted. The commenter asked if this means contract seed peas will no longer qualify for separate optional units (unless there are separate contracts for the different dry pea types that qualify), or will contract seed peas be listed as a separate dry pea type on the Special Provisions. Since the Special Provisions are not included in the proposed rule, it is difficult to know what kind of change might be intended.

Response: Section 2 has been revised to clarify that contract seed peas will qualify for optional units if contract seed peas are listed as a separate type on the Special Provisions.

Section 3—Insurance Guarantees, Coverage Levels and Prices for Determining Indemnities

Comment: One commenter stated they believe the intent of this section is to limit the producer to the same single level of coverage for all types of dry peas that are planted in the county. It also does not change the requirement to report all acreage of dry peas planted in the county that are planted to insurable types as listed in the Special Provisions. This would make this policy consistent with the Dry Bean Crop Provisions in that it would require all acreage of dry peas to be insured and all types would be insured at the same coverage level. If this is not the intent, the commenters recommended that it be changed to match what is done for dry beans. Otherwise, if the insured is allowed to have separate coverage levels by type, each type should be treated as a different crop with a separate administrative fee, etc. (i.e., California grapes). If the intent is to limit producers to the same single level of coverage for all types, the language could be further clarified as follows: ''In lieu of the requirements of section 3 of the Basic Provisions, you must select the same coverage level for all types listed on the Special Provisions.'' The current language indicates only a single level can be selected for each type but does not stipulate that it must be the same. The above language clarifies that only one level can be selected and it must be the same for all types.

Response: The intent of the proposed provisions in section 3(a) and 3(b) is to allow separate coverage levels and price election percentages by type listed on the Special Provisions. According to section 7 of the Dry Pea Crop Provisions, all dry pea types in the county for which there is a premium rate must be insured. Therefore, the requirement to report all acreage of dry peas planted to insurable types in the county remains the same. Offering a separate coverage level by type does not automatically imply each type be treated as a separate crop. No change has been made.

Comment: Two commenters also stated the language in proposed section 3(a) allows separate coverage levels by type and proposed section 3(b) allows separate price percentages by type. As is currently proposed, this would allow different coverage levels for different types even within the same unit. The

commenter does not know of any other crop that allows different coverage levels within the crop and objects to allowing separate coverage levels by type.

Response: The proposed provisions would allow different coverage levels for different types even within the same basic unit. However, since optional units are available by type, it is likely that most producers will opt for optional units for each of their insurable types of dry peas. Offering separate coverage levels by type provides the dry pea producers another method to manage their risk.

Comment: One commenter stated there seems to be missing information in proposed section 3(a) that surrounds the ability for the insured to select different coverage levels by type. For example, two different types of dry peas are listed on the application as being insured at a 70 percent and 65 percent coverage level, respectively. At acreage reporting time, the producer identifies a third type of dry pea planted that was not listed on the application. The commenter questions at what coverage level would the insurance provider insure that type. One suggestion is to allow the producer to select a coverage level for the crop and if the producer wants to insure a specific type of dry peas at a different coverage level, he must identify that separate coverage level on the application for that specific type. If the producer does not specify a separate coverage level for a specific type, the type will be insured under the coverage level selected at the crop level.

Response: The commenter is correct that there is missing information. FCIC has revised section 3 to include provisions stating if a dry pea type is added after the sales closing date, the dry pea type will be assigned a coverage level equal to the lowest coverage level selected for any other dry pea types; and a price election percentage equal to 100 percent if additional coverage is elected and 55 percent if catastrophic level of coverage is elected.

Comment: One commenter recommended that the last portion of the lead-in paragraph in proposed section 3(b) be revised as follows: ''* * * in which case you may select a different price election percentage for each such dry pea type so designated in the Special Provisions * * *'' This clarifies that if a different price election is offered by type that a different price election percentage could be elected for each such type and would be consistent with the Dry Bean Crop Provisions.

Response: FCIC has broken section 3(b) into separate paragraphs for clarity. FCIC has revised the newly designated section 3(b)(2) to clarify if the Special Provisions designate a separate price election by type, the producer may select one price election for each type listed in the Special Provisions. The price election the producer chooses for one type is not required to have the same percentage relationship to the maximum price offered for another type.

Comment: Two commenters stated proposed section 3(b) says the producer may select only one price election for all dry peas in the county insured under this policy unless the Special Provisions provide different price elections for a particular type, in which case the producer may select one price election for each dry pea type so designated in the Special Provisions. The commenters asked whether this means that if the Special Provisions lists three dry pea types, with one type having a different price election from the other two types (which show the same price because of the market), those two types would have to have the same price percentage. In the alternative, the commenter asks whether it means that as long as the three types are listed on separate lines, each with its own price election, those are considered different price elections and producers can choose different price percentages as well as different coverage levels under proposed section 3(a). If it is the former, the commenter asks FCIC to consider revising to ''* * * unless the Special Provisions provide a different price election for a particular type * * *'' If the latter is correct, the commenter asks that FCIC consider going back to the current wording, ''* * * by type'' [as in (b)(1) & (3)]. Depending on the response to these questions, the references in (b)(1) & (3) to ''different price elections by type'' may need to be reviewed as well.

Response: FCIC has revised the provisions in section 3(b) to clarify that if there is more than one type of dry pea listed on the Special Provisions, then each type may have a separate price election percentage, regardless if the price for one type is the same as the price for another type. For example, type A and type B are listed on the Special Provisions. The price for type A is $0.12. The price for type B is also $0.12. The price election percentage for type A and type B do not have to be the same even though the price election for type A is the same as the price election for type B.

Comment: Two commenters stated proposed section 3(b) states that if there are different price elections, then the producer ''may select one price election for each dry pea type,'' while proposed section 3(b)(1) states ''the price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type.'' The commenter suggested the last phrase of (b) should be deleted from (b) and combined with (b)(1), which would then provide the additional options when separate price elections are designated.

Response: The commenter is correct that the last phrase of section 3(b) should be deleted from (b) and added to the provisions that state what options the producers have when separate price elections are designated on the Special Provisions. As stated above, FCIC has also reformatted section 3(b) to make it easier to read.

Comment: Two commenters stated proposed section 3(b)(2) should either be moved to the end of section 3(a) because it refers to the coverage level for catastrophic (CAT) level of coverage, instead of the percentage of price election, or it should be reworded to address the percentage of price election for CAT level of coverage. If it remains in section 3(b), the commenter suggested it should be the first or last of the three paragraphs under section 3(b) instead of between paragraphs (1) and (3).

Response: FCIC has moved the provisions related to CAT coverage proposed in section 3(b)(2) to section 3(a).

Comment: Two commenters suggested revising proposed section 3(b)(3) because the current wording suggests the producer has a choice of price elections even if price elections by type are not listed on the Special Provisions. The commenters suggested revising it to say ''* * * the same price election percentage applies for each dry pea type.''

Response: The commenter is correct that a producer does not have a choice of multiple price elections when the Special Provisions do not designate separate price elections by type. FCIC has revised section 3(b) to state if the Special Provisions do not designate separate price elections by type, the producer may select only one price election for all dry peas in the county.

Comment: One commenter supported the right of a producer to select his/her own separate coverage level on dry peas, lentils and chickpeas.

Response: FCIC has retained the provisions in the final rule. The producer is allowed to select a separate coverage level for each type of dry peas.

Section 7—Insured Crop

Comment: Two commenters suggested deleting the word ''to'' before the phrase ''otherwise not harvest'' in proposed section 7(a)(3)(iv).

Response: FCIC has revised the provisions as suggested.

Section 8—Insurable Acreage

Comment: Three commenters stated the last sentence of proposed section 8(b), which states, ''We will not require you to replant if it is not practical to replant the type of dry peas originally planted,'' indicates it is not required that the producer replant if it is not practical to replant to the same type of dry peas originally planted. The commenter questioned if this conflicts with the new language in proposed section 9(d).

Response: The commenters are correct that the provisions in section 8(b) conflict with the new language in section 9(d). FCIC has removed the current provisions in section 8(b) and moved the provisions proposed in section 9(c), 9(d), and 9(e) to section 8 as some of the language is duplicative and is more appropriate in section 8 regarding insurable acreage than in section 9 regarding the insurance period.

Section 9—Insurance Period

Comment: Two commenters suggested adding a comma after the middle phrase ''section 11 of the Basic Provisions'' and adding the word ''the'' before the word ''provisions'' in the introductory text of section 9.

Response: FCIC has revised the provisions as suggested.

Comment: Three commenters stated the provision proposed in section 9(c) states the following: ''Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would not further care for the crop, must be replanted unless we agree that it is not practical to replant.'' This has the current language regarding replanting, but otherwise essentially duplicates provisions currently contained in proposed section 8(b). Two commenters also stated the last sentence in the provisions currently contained in section 8(b) states, ''* * * We will not require you to replant if it is not practical to replant the type of dry peas originally planted.'' The commenter asked if this sentence, and proposed section 9(d), belong in section 9 or in section 8. The commenters also stated similar replanting language also has been added in proposed section 9(d), particularly (d)(1), and in section 9(e)(3). The commenter asked that FCIC consider if this language must be repeated in four different subsections.

Response: As stated above, the commenters are correct that section 9(c) duplicates provisions currently contained in section 8(b). FCIC has removed the provisions currently contained in section 8(b) and the language proposed in section 9(c) has been moved to section 8(b). As stated above, the commenter is also correct that the entire proposed section 9(d) belongs in section 8 because it related to insurable acreage. The entire proposed section 9(e) has also been moved to section 8 because it is more appropriate in section 8.

Comment: One commenter supported the proposal to offer the Winter Coverage Option for dry peas and using the language from the Small Grains Crop Provisions as a starting point for developing similar language for dry peas. However, the commenter believed some of the language in the Small Grains Crop Provisions that deals with counties containing both fall and spring final planting dates is not appropriate for dry peas and should be clarified as indicated below to be more applicable for dry peas. The commenter stated the second part of proposed section 9(d)(1) indicates that if it is not practical to replant to a fall-planted type of dry peas that the insured must replant to a spring type in order to maintain coverage based on the fall-planted type. The commenter is concerned with the various different types of dry peas that could be insured in some areas and the different level of yields and prices that can exist between the different types of dry peas (particularly fall types versus spring types). The commenter recommended that in this situation, coverage would revert to the respective spring type that is planted rather than remain based on the fall-planted type, which may not be reflective of the yield or price potential of the spring-planted type. In addition, the current language would allow producers the ability to adversely select against the insurance provider by planting a lower yielding or priced spring type in these types of situations. The commenter also stated the above comments would impact proposed section 9(e) as well. The commenter references Austrian winter peas as an example of a fall-planted type and they are not aware of a spring-planted version of this same type of pea. The commenter stated that under this provision, if they received a request to insure Austrian winter peas in a county with only a spring final planting date, they would not be able to establish a yield etc., for a spring seeded type as it does not exist. The commenter recommended that coverage be based on the fall-planted dry pea type in these types of situations. In addition, if damage occurs after such acreage has been accepted for coverage, and must be replanted to a spring-planted type, the commenter recommended the coverage revert to the spring-planted type in these situations.

Response: FCIC has retained the Winter Coverage Option provisions in the final rule. Coverage for the spring peas planted on failed fall acreage should not revert to the respective spring-planted type rather than remain based on the fall-planted type. Allowing spring-planted dry peas to be insured as fall-planted dry peas when it has been replanted on failed fall dry pea acreage is permitted because insurance has already attached to the fall dry pea crop and replanting to the spring crop is a means to mitigate the damages associated with the failed fall crop.

FCIC is aware of Austrian pea varieties that are spring-planted. Austrian peas (a.k.a black peas; dry peas with a dark and mottled seed coat) are a variety of peas typically characterized as having moderate to good winter survivability. Their cold temperature tolerance and subsequent reproductive phase do not have a vernalization requirement similar to winter wheat. Therefore, it can successfully be produced when sown in the fall or spring.

Section 10—Causes of Loss

Comment: One commenter suggested clarifying section 10(b) to state ''Fire, due to natural causes.''

Response: No changes to this section were proposed. Further, the current introductory text of section 10 states the specified causes of loss are in accordance with the Basic Provisions. The Basic Provisions contain the requirement that all causes of loss must be due to a naturally occurring event. There is no reason to be repetitive. In addition, to explicitly state that fire must be due to natural causes while not including this language with the other listed causes losses could create the mistaken impression that such other causes do not have to be from natural causes. No change has been made.

Section 11—Replanting Payments

Comment: Two commenters stated the wording of the last phrase regarding compliance with all replanting payment requirements in the Basic Provisions ''* * * and in the Winter Coverage Option for which you are eligible and which you have elected'' sounds as though every dry pea producer will be eligible and will elect the Winter Coverage Option. While the commenters realize this language was taken from the current Small Grains Crop Provisions, they suggested FCIC consider rephrasing

it something like ''* * * and in the Winter Coverage Option, if applicable.''

Response: FCIC has revised the provisions accordingly.

Comment: Two commenters suggested deleting the period at the end of section 11(a)(3) and replacing it with a semicolon to be consistent with the other subsections.

Response: FCIC has revised the provisions as suggested.

Comment: Two commenters suggested deleting ''* * * (see section 15) * * *'' in proposed section 11(a)(5) since the Winter Coverage Option has already been referenced in (a)(2). The commenter also suggested placing the parenthetical reference in proposed section 11(a)(2).

Response: FCIC has revised the provisions as suggested.

Comment: One commenter asked if the producer does not select the Winter Coverage Option, but does have insured fall-planted acreage in a county with a fall planting date, and damage occurs prior to insurance attaching, are those acres still eligible for a replanting payment.

Response: If a producer has insured fall-planted acreage in a county with a fall and spring final planting date, but does not elect the Winter Coverage Option, the producer is not eligible for a replanting payment. FCIC has revised the provisions in section 11 to clarify fall-planted acreage not covered under the Winter Coverage Option that is damaged after it is accepted for insurance but before the spring sales closing date must be replanted but no replanting payment will be made.

FCIC has also added provisions to section 11(a)(5) to clarify if the Winter Coverage Option is in effect, damage must occur after the fall final planting date for the acreage to be eligible for a replanting payment. This revision clarifies the Winter Coverage Option must be in effect in order for the fall acreage to be eligible for a replanting payment.

Comment: Two commenters stated proposed section 11(b) provides a maximum of ''* * * the lesser of 20.0 percent of the production guarantee or 200 pounds * * *'' The commenter asks whether the different dry pea types will have similar yields so that 200 pounds will be appropriate for all. For example, if chickpeas are shifted from the Dry Bean policy to the Dry Pea policy, they will have a much higher maximum than before.

Response: The data shows that all dry pea types will have similar yields and, therefore, the 200 pounds will be appropriate for all types. FCIC recognizes chickpeas will have a higher maximum than they previously did under the Dry Bean Crop Provisions but it should not be excessive.

Comment: Two commenters stated the lead-in to proposed sections 11(d)(1) and (2) will read more smoothly with the word ''for'' added at the end of proposed section 11(d).

Response: The addition of ''for'' would make the sentence grammatically incorrect. No change has been made.

Comment: One commenter stated the last sentence of the lead-in paragraph of section 11(d) could be removed in addition to items (1) and (2). Damaged fall-planted acreage that is replanted to a spring-planted type should have the coverage revert to the applicable spring type that is planted. The commenter does not believe that item (d)(2) will occur and could be removed as well.

Response: As stated above, coverage on the acreage replanted to a spring type on failed fall-planted acreage should not revert to the spring type, instead of the fall-planted type that was originally planted. Allowing spring-planted dry peas to be insured as fall-planted dry peas when it has been replanted after a failed fall dry pea crop is permitted because insurance has already attached to the fall dry pea crop and replanting to the spring crop is a means to mitigate the damages associated with the failed fall crop. It is not considered a new crop. No change has been made in response to this comment.

Section 12—Duties in the Event of Damage or Loss

Comment: One commenter stated since there is no change being made to section 14 of the Basic Provisions, there does not appear to be a need to retain this provision and it could be removed.

Response: Section 14 of the Basic Provisions states representative samples must be left intact if the Crop Provisions require them. If the provisions in section 12 were removed, producers would not be required to maintain representative samples. Therefore, section 12 must remain in the Dry Pea Crop Provisions in order to require representative samples. FCIC is only removing provisions in section 12 of the Dry Pea Crop Provisions that duplicate the provisions in the Basic Provisions. No change has been made.

Comment: Two commenters supported changing the language in proposed section 12 to delete the details and simply refer to section 14 of the Basic Provisions regarding representative samples.

Response: FCIC has retained the provision in the final rule.

Section 13—Settlement of Claim

Comment: Two commenters recommended changing the word ''variety'' to ''type'' in proposed section 13(b)(4) to be consistent with provisions throughout the policy.

Response: The word ''variety'' should not be changed to ''type'' in section 13(b)(4). In the definition of ''seed company contract,'' which has been renamed as ''processor/seed company contract,'' the word ''variety'' has been retained because varieties, rather than types, are stated in the processor/seed company contracts. No change has been made.

Comment: Two commenters suggested adding the word ''contract'' between the words ''base'' and ''price'' in proposed section 13(b)(5) to be consistent with the revised definition of ''base contract price.''

Response: FCIC has revised the provision as suggested.

Comment: Two commenters suggested changing ''400,000 pounds guarantee'' to ''400,000-pound guarantee'' in step (1) of both examples in proposed section 13(b), and step (2) of the second example in proposed section 13(b). The commenter also suggested making a similar change to ''500,000-pound guarantee'' in steps (4) and (5) of the second example in proposed section 13(b).

Response: FCIC has revised the provisions as suggested.

Comment: Two commenters suggested changing the word ''variety'' to ''type'' in subsection (c) to be consistent with provisions throughout the policy; changing ''base price'' to ''base contract price'' in proposed section 13(c)(1) to match the revised definition of ''base contract price;'' and changing ''seed pea processor contract'' to ''seed company contract'' in section 13(c)(2) to match the term used in the revised ''base contract price'' definition.

Response: As stated above, the word ''variety'' should not be changed to ''type.'' In the definition of ''seed company contract,'' which has been renamed as ''processor/seed company contract,'' the word ''variety'' has been retained because varieties, rather than types, are stated in the processor or seed company contracts. FCIC agrees ''base price'' should be changed to ''base contract price'' and ''seed pea processor contract'' should be changed to ''seed company contract.'' Based on a previous comment, FCIC has also revised the phrase ''seed company contract'' to ''processor/seed company contract.'' This phrase has also been added to section 13(c)(1).

Comment: One commenter recommended adding a reference to

''objective, measurable minimum quality requirements'' for mature dry pea production in proposed section 13(c)(2) to be consistent with the same language that was added in proposed section 13(c)(1).

Response: FCIC has revised the provision as suggested. FCIC has also revised proposed section 13(c)(1) by adding the word ''mature'' between the words ''for'' and ''production'' to be consistent with the same language in proposed section 13(c)(2).

Comment: Two commenters suggested the reference in proposed section 13(d)(1)(iii) should be ''section 13(c) or (3)'' instead of ''section 13I or (e).''

Response: FCIC has revised the provision as suggested.

Comment: Two commenters question if chickpeas are moved from the Dry Bean policy to the Dry Pea policy whether the reference to the United States Standards for Whole Dry Peas, Split Peas, and Lentils in proposed section 13(e)(1)(i) also need to refer to the United States Standards for Beans as in the Dry Beans policy.

Response: FCIC does not believe the reference to the United States Standards for Whole Dry Peas, Split Peas, and Lentils also needs to refer to the United States Standards for Beans. FCIC has provided for additional grade standards to be specified in the Special Provisions. Therefore, the United States Standards for Beans can be referenced in the Special Provisions, if needed. The flexibility of the Special Provisions also allows for different grade standards if other types, which require a different grade standard, are added on the Special Provisions in the future. No change has been made.

Section 14—Prevented Planting

Comment: One commenter recommended eliminating the option to increase prevented planting coverage levels (in the second sentence), as well as reviewing the amount that is being paid for prevented planting purposes.

Response: Since no changes to this section were proposed, the recommended changes are substantive in nature, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Section 15—Winter Coverage Option

Comment: One commenter supported the change to allow insurance on fall planted dry peas with a Winter Coverage Option. The commenter assumes the Winter Coverage Option will be available for qualified lentil varieties planted in the fall.

Response: FCIC has retained the Winter Coverage Option in the final rule. Coverage for fall-planted lentils will be available under the Winter Coverage Option if they are designated as a type on the Special Provisions and the Winter Coverage Option is available in the county.

Comment: One commenter stated they are supportive of the proposal to offer the Winter Coverage Option for dry peas and using the language from the Small Grains Crop Provisions Wheat or Barley Winter Coverage Endorsement as a starting point for developing similar language for dry peas. However, the commenter believes some of the language in the Winter Coverage Endorsement is not appropriate for dry peas and should be clarified.

Response: As stated above, FCIC has retained the Winter Coverage Option in the final rule. Based on other comments FCIC has received regarding the Winter Coverage Option, FCIC has made revisions to section 15 to ensure the language is appropriate for dry peas.

Comment: One commenter asked if there would be any rules regarding acreage that is insured under the Winter Coverage Option and is planted after the fall final planting date. The commenter also asked if the acreage is still insurable under the Winter Coverage Option or does the Winter Coverage Option not apply to that acreage.

Response: Acreage planted after the fall final planting date is not covered under the Winter Coverage Option. However, that acreage is potentially insurable in the spring provided there is an adequate stand in the spring. The late planting provisions in the Dry Pea Crop Provisions are similar to the late planting provisions in the Wheat or Barley Winter Coverage Endorsement.

Comment: Two commenters stated the opening statement in the Winter Coverage Option that reads ''(This is a continuous endorsement)'' could be deleted since this a section of the proposed Dry Pea Crop Provisions, not a separate endorsement. The commenters also stated if the phrase, ''(This is a continuous endorsement),'' is not removed, then ''endorsement'' should be changed to ''option.''

Two commenters also stated the Winter Coverage Option is referred to as an ''endorsement'' in the opening phrase ''(This is a continuous endorsement)'' but the more appropriate reference would be an ''option.''

One commenter also stated, since this is a continuous option, there should be some reference to the possibility of canceling the Winter Coverage Option without also having to cancel the dry pea coverage altogether.

Response: The commenters are correct that the phrase, ''(This is a continuous endorsement),'' is not necessary and has revised the provisions accordingly. Since the opening phrase has been removed, there is no need to change the word ''endorsement'' to ''option.''

The commenters are also correct that there should be some reference to canceling the Winter Coverage Option without also having to cancel the dry pea coverage altogether. FCIC has added language in section 15(e) to state the option will continue in effect until canceled or coverage under the Dry Pea Crop Provisions is canceled or terminated.

Comment: Two commenters suggested removing proposed section 15(a). The commenters asked that since some of the subsections of section 15 state they are ''in lieu of'' other sections of the Dry Pea Crop Provisions whether there are any remaining that might conflict.

Response: Section 15(a) should not be removed to ensure that the terms of the Winter Coverage Option control in case FCIC has failed to catch any other conflicts. Under the priority in the Basic Provisions, since these provisions are all in the Crop Provisions, they would be given the same priority without the inclusion of section 15(a). However, language in redesignated sections 15(g) and 15(h) have been revised to remove the ''in lieu of'' language as it is no longer necessary because of the language in section 15(a). Redesignated sections 15(g) and 15(h) have been revised to be consistent with provisions in the Wheat or Barley Winter Coverage Endorsement.

Comment: Two commenters asked if it was necessary to state in proposed section 15(b) CAT level of coverage is not available under this option when the CAT Endorsement already states no options or endorsements can apply at the CAT level of coverage.

One commenter stated proposed section 15(b) should be reworded to state ''This option is not available under Catastrophic Risk Protection (CAT).''

Response: Section 15(b) is necessary to make it clear because this is an endorsement offered under the Crop Provisions, not a stand alone endorsement. However, FCIC has reworded it to specify the insured must have purchased additional coverage under the Dry Pea Crop Provisions.

Comment: Two commenters stated the statement in proposed section 15(d) that ''You must have a Dry Pea Crop Insurance Policy in effect and elect to insure the dry pea type under such policy'' is unnecessary since the

proposed Winter Coverage Option will be part of the Dry Pea Crop Provisions, not a separate endorsement like the one for Wheat and Barley. Also, the reference to insuring ''the dry pea type'' is confusing, suggesting that producers would be able to insure one type but not have to insure all dry peas in the county.

One commenter suggested proposed sections 15(d) and (j) seem to be somewhat repetitive and could either be removed or combined into a single provision. Since this option is built into the Dry Pea Crop Provisions, it is obvious that the policy would have to be in effect and it appears that the intent of earlier sections is that, once the crop is insured, all insurable acreage of the various dry pea types planted in the county must be insured.

Response: Proposed section 15(d) is not necessary so FCIC has not retained that provision in the final rule.

Comment: Two commenters stated it is unclear if the different references in proposed sections 15(d), (e), (h), (j), (l) and (l)(3)(iii) to ''dry pea type'' and ''dry pea crop'' are intended or not. The commenters asked if some or all of these references could be revised to ''dry peas'' instead.

Response: FCIC has revised the phrases ''dry pea type'' and ''dry pea crop'' as ''dry peas'' in all cases in section 15, except for redesignated section 15(k)(3)(iii). ''Dry pea type'' in redesignated section 15(k)(3)(iii) has been retained because the provisions in that section pertain to individual dry pea types, rather than all dry peas.

Comment: Two commenters suggested changing the word ''coverage'' to ''option'' in proposed section 15(e).

Response: FCIC has revised the provision as suggested.

Comment: Two commenters stated proposed section 15(e) states ''You must select this coverage on your application for insurance on or before the sales closing date * * *'' While 15(h) would change the contract change date to June 30, the cancellation date to September 30, and the termination date to November 30, there is no change of the sales closing date indicated for when the Winter Coverage Option is elected. The commenters asked if it is intended that Winter Coverage on dry peas can be applied for on March 15. The commenters stated according to proposed section 15(f), ''Coverage * * * begins on the later of the date we accept your application for coverage or on the fall final planting date * * *'' so an application signed on the March 15 sales closing date would not actually provide winter coverage that first year.

Response: The producer will be required to elect the Winter Coverage Option by the fall sales closing date, which will be listed on the Special Provisions. Coverage under the Winter Coverage Option will attach on the later of the date the application is accepted or on the fall final planting date. Section 15 has also been revised by adding a new paragraph (d) to clarify the Winter Coverage Option is only available in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

Comment: One commenter expressed a concern about allowing the producer the ability to change the coverage level or price election percentage once this option is in effect, since it is a continuous option. For example, assume a producer elects this option and plants and insures fall-planted dry peas. The next year the same producer decides not to plant fall-planted dry peas but the option remains in effect since it is continuous (assume the producer does not remove it from the policy). The commenter asked if a producer in this situation could change the coverage level or percentage of price election up to the spring sales closing date since no acreage was planted in the fall. The commenter recommended that producers in this situation be allowed to make such changes up to the spring sales closing date (especially since there is a much larger amount of acreage that is planted to spring types as compared to fall types). The commenter stated this is allowed in the Small Grains Crop Provisions via the definition of 'Sales Closing Date'. The commenter recommended this be done by either adding a definition for 'Sales Closing Date' or by adding some language to this effect directly to section 15 to allow these types of changes to be made in the event that no fall-planted acreage is planted while this option is still in effect.

Response: The producer should be allowed to make policy changes until the spring sales closing date if the producer does not have any insured fall-planted dry pea acreage. Provisions have been added to section 15(e) to state producers may change their coverage level or percentage of price election for dry pea types until the spring sales closing date if the Winter Coverage Option is selected, but they do not have any insured fall-planted acreage or the fall-planted acreage is not eligible for this option. Provisions have also been added to section 15(e) to allow the producer to cancel coverage for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of the option is to be effective. Without this additional language, the Winter Coverage Option would continue in effect as long as the Dry Pea Crop Provisions are in effect since the Winter Coverage Option is a continuous option. This language allows the producer to cancel the Winter Coverage Option if he desires.

Comment: One commenter stated proposed section 15(g) is establishing separate optional units for dry peas initially planted in the fall versus dry peas initially planted in the spring. The commenter stated they are not aware of any dual types of dry peas and question whether this provision is even necessary when separate units by type are currently allowed.

Response: As stated above, there are dual types of dry peas. An example is Austrian peas (a.k.a. black peas; dry peas with a dark and mottled seed coat), which are a variety of peas typically characterized as having moderate to good winter survivability. Their cold temperature tolerance and subsequent reproductive phase do not have a vernalization requirement similar to winter wheat. Therefore, they can successfully be produced when sown in the fall or spring.

Section 15(g) is not needed as the provisions in section 2 already allow separate units by type and it has been removed. Proposed sections 15(h) through 15(l) have been redesignated as 15(g) through 15(k), respectively.

Comment: One commenter stated proposed section 15(g) states ''In addition to the provisions of section 34(b) of the Basic Provisions and section 2 of the Dry Pea Crop Provisions, optional units may be established for dry peas if each optional unit contains only dry peas initially planted in the fall or only dry peas initially planted in the spring.'' The commenter asked if the fall-planted acreage in a unit is Austrian Winter peas, and within that same unit, Lentils are planted in the spring, would these two separate types not be allowed to have separate optional units since one is fall-planted and one is spring-planted.

Response: As stated above, FCIC has removed the provisions in proposed section 15(g). If Austrian peas are planted in the fall and Lentils are planted in the same unit in the spring, then the Austrian peas and the Lentils could be separate optional units, provided the producer elected optional units, since the Austrian peas and the Lentils are different types.

Comment: One commenter stated since the Winter Coverage Option is not a separate option to the Dry Pea Crop

Provisions, the phrase ''section 2 of the Dry Pea Crop Provisions'' in section 15(g) should be changed to ''section 2 of these Crop Provisions.''

Response: As stated above, the provisions in section 15(g) have been removed from the Winter Coverage Option.

Comment: One commenter stated proposed section 15(h) establishes a separate contract change date, cancellation date, and termination date for coverage under this option. The commenter assumed the Special Provisions will also establish a separate sales closing date and acreage reporting date as well.

Response: Proposed section 15(h) is now section 15(g). The Special Provisions will provide a separate sales closing date and acreage reporting date for dry peas covered under the Winter Coverage Option. Additionally, provisions have been added to section 15(g) to handle situations that arise when a policy has amounts due and the sales closing date for the next crop year occurs before the termination date for the previous crop year. For example, dry peas insured under the Winter Coverage Option have a fall sales closing date of September 30, 2009 for the 2010 crop year and a termination date of November 30 for the 2009 crop year. If the insured purchases insurance for dry peas by September 30, 2009 for the 2010 crop year, and does not pay the premium by the termination date of November 30, 2009, the dry pea coverage would be terminated and no coverage would be effective for the 2010 crop year.

Comment: Two commenters stated according to proposed section 15(h), whenever a producer requests the Winter Coverage Option, the contract change date is changed to June 30, the cancellation date to September 30, and the termination date to November 30 for ''* * * all your fall planted and spring planted dry pea crop in the county.'' The commenter asks whether this means that all future policy changes to the Dry Pea Crop Provisions will have to be published by the June 30 contract change date or whether different versions could be in effect for producers with and without the Winter Coverage Option. The commenter also asks whether there will be a different sales closing date.

Response: Proposed section 15(h) is now section 15(g). Since the earliest contract change date is now June 30 for dry peas, all future policy changes to the Dry Pea Crop Provisions will have to be published by the June 30 contract change date. There will also be a separate sales closing date listed on the Special Provisions for fall-planted acreage under the Winter Coverage Option.

Comment: Two commenters stated the reference to ''Dry Pea Crop Insurance Provisions'' in proposed section 15(l) should be changed to ''these Crop Provisions'' or ''Dry Pea Crop Provisions'' to be consistent with the other references in the policy.

Response: FCIC has revised the provision in redesignated section 15(k) to read ''these Crop Provisions.''

Comment: One commenter stated proposed section 15(l)(2) indicates that if it is not practical to replant to a fall-planted type of dry peas that the insured must replant to a spring type in order to maintain coverage based on the fall-planted type. The commenter is concerned with the various different types of dry peas that could be insured in some areas and the different level of yields and prices that can exist between the different types of dry peas (particularly fall types versus spring types). The commenter recommended that in this situation the coverage would revert to the respective spring type that is planted rather than remain based on the fall-planted type, which may not be reflective of the yield or price potential of the spring-planted type. In addition, the current language would allow producers the ability to adversely select against the insurance provider by planting a lower yielding or priced spring type in these types of situations.

Response: Proposed section 15(l)(2) is now section 15(k)(2). As stated above, coverage should not revert to the respective spring-planted type rather than remain based on the fall-planted type. Allowing spring-planted dry peas to be insured as fall-planted dry peas when they have been replanted after a failed fall dry pea crop is permitted because insurance has already attached to the fall dry pea crop and replanting to the spring crop is a means to mitigate the damages associated with the failed fall crop. No change has been made.

In addition to the changes described above, FCIC has made the following changes:

1. Revised the definition of ''contract seed peas'' in section 1 to remove the phrase ''Dry Peas'' and replace it with the phrase ''Peas (*Pisum sativum L.*).'' This revision clarifies contract seed peas are only insurable if they are of the genera *Pisum sativum*. The current phrase ''Dry Peas'' in the definition implies contract seed peas can be categorized as any dry peas type specified in the definition of ''dry peas.''

2. Amended proposed section 3 by revising paragraph (a). The proposed provision states ''In lieu of the requirements of section 3 of the Basic Provisions'' but should state ''In addition to the requirements of section 3 of the Basic Provisions.'' The phrase ''In addition to'' implies section 3 of the Dry Pea Crop Provisions supplements section 3 of the Basic Provisions; the phrase ''In lieu of'' implies section 3 of the Dry Pea Crop Provisions replaces section 3 of the Basic Provisions. The intent of the provision is to be a supplement to the Basic Provisions.

3. Revised the introductory text in redesignated section 13(b) by revising the phrase ''your pea crop'' to ''your dry pea crop'' and in redesignated section 13(d) by revising the phrase ''total pea production'' to ''total dry pea production'' to be consistent with the terminology used throughout the policy.

4. Revised the examples in redesignated section 13(b) to make them easier to read.

5. Revised the introductory text in redesignated section 13(d) to add the word ''dry'' before the word ''pea.'' This change is consistent with the phrase ''dry pea'' used throughout the policy.

6. Revised the introductory text in redesignated section 13(e) to be consistent with the introductory text in redesignated sections 13(c)(1) and 13(c)(2).

7. Revised redesignated section 14 to remove the reference to ''limited coverage,'' since it is no longer applicable.

8. Revised section 15(e). The proposed provisions state, ''You must select this coverage on your application for insurance on or before the sales closing date.'' This language only addresses how to select the Winter Coverage Option if producers are applying for coverage; it does not address how to select the Winter Coverage Option if producers are renewing their coverage. The revised provisions state, ''You must select this option on your application for insurance, or on a form approved by us, on or before the sales closing date for the initial year in which you wish to insure dry peas under this option.'' This language distinguishes how producers select the Winter Coverage Option if they are applying for coverage and if they are renewing their coverage.

List of Subjects in 7 CFR Part 457

Crop insurance, Dry peas, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2009 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Section 457.140 is amended as follows:

■ A. Amend the introductory text by removing ''2003'' and adding ''2009'' in its place;

■ B. Remove the undesignated paragraph immediately preceding section 1;

■ C. In section 1:

■ 1. Remove the definition of ''base price'' and add the definition of ''base contract price'' in its place;

■ 2. Amend the definition of ''combining'' by removing the word ''place'' and adding the word ''places'' in its place;

■ 3. Revise the definition of ''contract seed peas'';

■ 4. Revise the definition of ''dry peas'';

■ 5. Add a new sentence at the end of the definition for ''harvest'';

■ 6. Amend the definition of ''local market price'' by adding the phrase, '', unless otherwise specified in the Special Provisions'' at the end of the last sentence;

■ 7. Revise the definition of ''nurse crop (companion crop)'';

■ 8. Revise the definition of ''practical to replant'';

■ 9. Revise the definition of ''price election'';

■ 10. Remove the definitions of ''seed company'' and ''seed company contract'';

■ 11. Add definitions for ''processor/seed company'', ''processor/seed company contract'', ''swathed'', ''type'', and ''windrow''.

■ D. Revise sections 2 and 3;

■ E. Amend section 6 removing the phrase ''seed company'' and adding the phrase ''processor/seed company'' in its place;

■ F. Revise section 7;

■ G. In section 8, revise paragraph (b) and add paragraphs (c) and (d);

■ H. Amend section 9 by revising the introductory text and paragraph (a) and by removing the phrase ''normally is harvested'' from paragraph (b) and adding the phrase ''is normally harvested'' in its place;

■ I. Redesignate sections 11 through 13 as sections 12 through 14, respectively;

■ J. Add a new section 11;

■ K. Revise newly redesignated section 12;

■ L. In newly redesignated section 13:

■ 1. Throughout the section, remove the phrases ''section 12'' and ''sections 12'' and add the phrases ''section 13'' and ''sections 13'' in their place, respectively;

■ 2. Revise paragraph (a);

■ 3. Amend the introductory text of paragraph (b) by adding the word ''dry'' before the word ''pea'';

■ 4. Amend paragraph (b)(5) by adding the word ''contract'' after the word ''base'';

■ 5. Revise the examples in paragraph (b);

■ 6. Revise paragraph (c)(1) introductory text;

■ 7. Amend paragraph (c)(1)(i) by adding the word ''contract'' after the word ''base'';

■ 8. Revise the introductory text in paragraph (c)(2);

■ 9. Amend the introductory text in paragraph (d) by adding the word ''dry'' after the word ''total'';

■ 10. Amend paragraph (d)(1)(iii) by removing the phrase '', excluding Austrian Winter Peas,'';

■ 11. Revise paragraph (e) introductory text and (e)(1) introductory text.

■ M. Amend newly redesignated section 14 of § 457.140 by removing the phrase ''limited or''; and

■ N. Add a new section 15.

The additions and revisions read as follows:

§ 457.140 Dry pea crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Base contract price. The price per pound stipulated in the processor/seed company contract without regard to discounts or incentives that may apply, and that will be paid to the producer for at least 50 percent of the total production under contract with the processor/seed company.

* * * * *

Contract seed peas. Peas (*Pisum sativum L.*) grown under the terms of a processor/seed company contract for the purpose of producing seed to be used in planting a future year's crop.

Dry peas. Peas (*Pisum sativum L.*), Austrian Peas (*Pisum sativum spp arvense*), Lentils (*Lens culinaris Medik.*), Chickpeas (*Cicer arietinum L.*), and other types as listed on the Special Provisions.

* * * * *

Harvest. * * * Dry peas that are swathed prior to combining are not considered harvested.

* * * * *

Nurse crop (companion crop). A crop planted into the same acreage as another crop to improve the growing conditions for the crop with which it is grown, and that is intended to be harvested separately.

* * * * *

Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant:

(a) Contract seed peas unless the processor/seed company will accept the production under the terms of the processor/seed company contract.

(b) Fall-planted dry peas more than 25 days after the final planting date for the corresponding spring-planted type of dry peas.

(c) All other dry peas more than 25 days after the final planting date unless replanting is generally occurring in the area.

Price election. In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be the percentage you elect (not to exceed 100 percent) of the base contract price and used for the purposes of determining premium and indemnity for contract seed peas under this policy.

Processor/seed company. Any business enterprise regularly engaged in the processing of contract seed peas, that possesses all licenses and permits for marketing contract seed peas required by the state in which it operates, and that owns, or has contracted, sufficient drying, screening, and bagging or packaging equipment to accept and process the contract seed peas within a reasonable amount of time after harvest.

Processor/seed company contract. A written agreement between the producer and the processor/seed company, executed by the acreage reporting date, containing at a minimum:

(a) The producer's promise to plant and grow one or more specific varieties of contract seed peas, and deliver the production from those varieties to the processor/seed company;

(b) The processor/seed company's promise to purchase all the production stated in the contract; and

(c) A fixed price, or a method to determine such price based on published information compiled by a third party, that will be paid to the producer for at least 50 percent of the production stated in the contract.

Swathed. Severance of the stem and pods from the ground without removal of the seeds from the pods and placing them into windrows.

Type. A category of dry peas identified as a type in the Special Provisions.

Windrow. Dry peas where the plants are cut and placed in a row.

2. Unit Division.

In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, separate optional units may be established for each dry pea type as specified on the Special Provisions. Contract seed peas and dry pea types not grown under a processor/seed company contract may qualify for separate optional units even if they share a common variety provided each dry pea type is grown on separate acreage and the production is kept separate.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In accordance with the requirements of section 3(b)(1) of the Basic Provisions, you may select only one coverage level for each type listed on the Special Provisions. However, if you elect the Catastrophic Risk Protection (CAT) level of insurance for any dry pea type, the CAT level of coverage will be applicable to all insured dry pea acreage in the county.

(b) In addition to the requirements of section 3 of the Basic Provisions:

(1) If the Special Provisions do not designate separate price elections by type, you may select only one price election for all dry peas in the county insured under this policy.

(2) If the Special Provisions designate separate price elections by type, you may select one price election for each dry pea type so designated in the Special Provisions even if the prices for each type are the same. The price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you may choose 75 percent of the maximum price election for another type.

(c) In addition to the requirements of section 3 of the Basic Provisions, in counties with both a fall and spring sales closing date for the insured crop:

(1) If you do not have any insured fall-planted dry pea acreage covered under the Winter Coverage Option, you may change your coverage level or percentage of price election until the spring sales closing date; or

(2) If you have any insured fall-planted dry pea acreage covered under the Winter Coverage Option, you may not change your coverage level or percentage of price election after the fall sales closing date.

(d) If a dry pea type is added after the sales closing date, we will assign:

(1) A coverage level equal to the lowest coverage level you selected for any other dry pea types; and

(2) A price election percentage equal to:

(i) 100 percent of the price election if you elected additional coverage; and

(ii) 55 percent of the price election if you elected catastrophic level of coverage.

* * * * *

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the dry pea types in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvesting once maturity is reached as:

(i) Dry peas; or

(ii) Contract seed peas, if the processor/seed company contract is executed on or before the acreage reporting; and

(3) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume;

(iii) Planted as a nurse crop; or

(iv) Planted to plow down, graze, harvest as hay, or otherwise not harvest as a mature dry pea crop.

(b) You will be considered to have a share in the insured crop if, under the processor/seed company contract, you retain control of the acreage on which the dry peas are grown, you are at risk of loss (i.e., if there is a reduction in quantity or quality of your dry pea production, you will receive less income under the contract), and the processor/seed company contract is in effect for the entire insurance period.

(c) In counties for which the actuarial documents provide premium rates for the Winter Coverage Option (see section 15), coverage is available for dry peas between the time coverage begins and the spring final planting date. Coverage under the option is effective only if you qualify under the terms of the option and you elect the option by the sales closing date.

8. Insurable Acreage.

* * * * *

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

(c) Whenever the Special Provisions designate both fall and spring final planting dates:

(1) Any fall-planted dry peas that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall-planted type of dry peas to maintain insurance based on the fall-planted type unless we agree that replanting is not practical. If it is not practical to replant to a fall-planted type of dry peas but it is practical to replant to a spring-planted type, you must replant to a spring-planted type to keep your insurance coverage based on the fall-planted type in force.

(2) Any fall-planted dry pea acreage that is replanted to a spring-planted type when it was practical to replant the fall-planted type will be insured as the spring-planted type and the production guarantee, premium and price election applicable to the spring-planted type will be used. In this case, the acreage will be considered to be initially planted to the spring-planted type.

(3) Notwithstanding section 8(d)(1) and (2), if you have elected coverage under the Winter Coverage Option (if available in the county), insurance will be in accordance with the option.

(d) Whenever the Special Provisions designate only a spring final planting date, any acreage of a fall-planted dry pea crop is not insured unless you request such coverage on or before the spring sales closing date, and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee.

(1) The fall-planted dry pea crop will be insured as a spring-planted type for the purpose of the production guarantee, premium and price election.

(2) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand prior to the spring final planting date.

(3) Any acreage of such fall-planted dry peas that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring-planted type of dry pea unless we agree it is not practical to replant. No replanting payment will be made.

(4) If fall-planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall-planted acreage.

9. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, and subject to the provisions provided by the Winter Coverage Option (see section 15) if you elect such option, the insurance period is as follows:

(a) Coverage for fall-planted dry peas not covered by the Winter Coverage Option will begin on the earlier of April 15 or the date we agree to accept the acreage for insurance, but not before March 1, unless otherwise specified on the Special Provisions.

* * * * *

11. Replanting Payments.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 11(a)(1)) and in the Winter Coverage Option (see section 15), if applicable;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) When the Winter Coverage Option is in effect for the acreage, damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(6) Replanting payments are not available for damaged fall planted dry pea acreage if you have not elected to cover such acreage under the Winter Coverage Option; and

(7) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or 200 pounds, multiplied by your price election, multiplied by your share, unless otherwise stated in the Special Provisions.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) Replanting payments will be calculated using the price election and production guarantee for the dry pea type that is replanted and insured. For example, if damaged smooth green and yellow pea acreage is replanted to lentils, the price election and production guarantee applicable to lentils will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged fall-planted type of dry peas replanted to a spring-planted type that retains insurance based on the production guarantee and price election for the fall-planted type; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

12. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

13. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional units, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) * * *

* * * * *

For example:

In this example, you have not elected optional units by type. You have a 100 percent share in 100 acres of spring-planted smooth green dry edible peas in the unit, with a 70 percent guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. Your selected price election percentage is 100 percent. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000-pound guarantee;

(2) 400,000-pound guarantee × $0.09 price election = $36,000.00 value of guarantee;

(9) 200,000-pound production to count × $0.09 price election = $18,000.00 value of production to count;

(12) $36,000.00 value of guarantee − $18,000.00 value of production to count = $18,000.00 loss; and

(13) $18,000.00 × 100 percent share = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of contract seed peas in the same unit, with a 65 percent guarantee of 5,000 pounds per acre and a base contract price of $0.40 per pound. Your selected price election percentage is 75 percent. You are only able to harvest 450,000 pounds. Your total indemnity for both spring-planted smooth green dry edible peas and contract seed peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000-pound guarantee for the spring-planted smooth green dry edible pea type;

(2) 400,000-pound guarantee × $0.09 price election = $36,000.00 value of guarantee for the spring-planted smooth green dry edible pea type;

(4) 100 acres × 5,000 pounds = 500,000-pound production to count for the contract seed pea type;

(5) 500,000-pound guarantee × $0.40 base contract price = $200,000.00 gross value of guarantee for the contract seed pea type;

(6) $200,000 × .75 price election percentage = $150,000 net value of guarantee for the contract seed pea type;

(8) $36,000.00 + $150,000.00 = $186,000.00 total value of guarantee;

(9) 200,000-pound production to count × $0.09 price election = $18,000.00 value of production to count for the spring-planted smooth green dry edible pea type;

(10) 450,000-pound production to count × $0.30 = $135,000.00 value of production to count for the contract seed pea type;

(11) $18,000.00 + $135,000.00 = $153,000.00 total value of production to count;

(12) $186,000.00 − $153,000.00 = $33,000.00 loss; and

(13) $33,000.00 loss × 100 percent share = $33,000.00 indemnity payment.

(c) * * *

(1) For mature production meeting the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, and for mature production that does not meet such requirements due to uninsured causes:

* * * * *

(2) For mature production not meeting the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, due to insurable causes, and immature production that is appraised:

* * * * *

(e) Mature dry pea production that does not qualify as contract seed peas under the policy terms or does not meet the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the processor/seed company contract, may be adjusted for quality deficiencies.

(1) Production will be eligible for quality adjustment in accordance with the following, unless otherwise specified in the Special Provisions:

* * * * *

15. Winter Coverage Option.

(a) In the event of a conflict between this section and sections 1 through 14 of these Crop Provisions, this section will control.

(b) You must have purchased additional coverage under the Dry Pea Crop Provisions in order to select this option.

(c) In return for payment of the additional premium designated in the actuarial documents, this option is available in counties for which the actuarial documents provide premium rates for the Winter Coverage Option.

(d) This option is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(e) You must select this option on your application for insurance, or on a form approved by us, on or before the sales closing date for the initial year in which you wish to insure dry peas under this option.

(1) Failure to do so means you have rejected this coverage for the dry pea crop planted in the fall and this option is void.

(2) This option will continue in effect until canceled or coverage under the Dry Pea Crop Provisions is canceled or terminated.

(3) This option may be canceled by you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date contained in section 15(g) preceding the crop year for which the cancellation of this option is to be effective.

(4) You may change your coverage level or percentage of price election for dry pea types until the spring sales closing date if you have selected this option, but do not have any insured fall planted acreage or your fall planted acreage is not eligible for this option.

(f) Coverage under this option begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(g) If you elect this option for dry peas initially planted in the fall, the following dates will be applicable to all your fall-planted and spring-planted dry peas in the county:

(1) Contract change date is June 30 preceding the cancellation date;

(2) Cancellation date is September 30; and

(3) Termination date is November 30. For a policy with amounts due, when the sales closing date is prior to the previous crop year termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity, prevented planting or replant payment will be owed.

(h) All notices of damage must be provided to us not later than 15 days after the spring final planting date designated in the Special Provisions.

(i) All insurable acreage of each fall planted dry pea type covered under this option must be insured.

(j) The amount of any indemnity paid under the terms of this option will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

(k) Whenever any acreage of dry peas planted in the fall is damaged during the insurance period and at least 20 acres or 20 percent of the insured planted acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(1) Continue to care for the damaged dry peas. By doing so, coverage will continue under the terms of the Basic Provisions, these Crop Provisions and this option;

(2) Replant the acreage to an appropriate type of insured dry peas, if it is practical, and receive a replanting payment in accordance with the terms of section 11. By doing so, coverage will continue under the terms of the Basic Provisions, these Crop Provisions and this option, and the production guarantee for the dry pea type planted in the fall will remain in effect; or

(3) Destroy the remaining crop on such acreage:

(i) By destroying the remaining crop, you agree to accept an appraised amount of production determined in accordance with section 13(d)(1) of these Crop Provisions to count against the unit production guarantee. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 13.

(ii) You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available.

(iii) If you elect to plant and elect to insure spring-planted dry pea acreage of the same dry pea type (you must elect whether or not you want insurance on the spring-planted acreage of the same dry pea type at the time we release the fall-planted acreage), you must pay additional premium for insurance. Such acreage will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted in the spring to the same dry pea type, and you must:

(A) Plant the spring-planted acreage in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining acreage of the fall-planted dry pea acreage; and

(B) Store or market the production in a manner which permits us to verify the amount of spring-planted production separately from any fall-planted production. In the event you are unable to provide records of production that are acceptable to us, the spring-planted acreage will be considered to be a part of the original fall-planted unit.

Signed in Washington, DC, on August 26, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–20128 Filed 9–3–08; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1291

[Docket No. AMS–FV–08–0057; FV–08–379 IFR]

RIN 0581–AC88

Specialty Crop Block Grant Program—Farm Bill; Notice of Request for Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule provides regulations to administer the Specialty Crop Block Grant Program—Farm Bill (SCBGP–FB) to enhance the competitiveness of specialty crops. This rule is intended to

establish eligibility and application requirements and grant administration procedures for the SCBGP–FB consistent with the Food, Conversation, and Energy Act of 2008 (Farm Bill) amendments to the Specialty Crops Competitiveness Act of 2004. This program is separate from the Specialty Crop Block Grant Program (SCBGP) found in 7 CFR part 1290.

DATES: Effective September 5, 2008; comments received by November 3, 2008, will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this rule must be received by November 3, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be posted on *http://www.regulations.gov;* or sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0235, Washington, DC 20250–0235; *Fax:* (202) 720–0016; *E-mail: scblockgrants@usda.gov.*

In addition, comments concerning the information collection and recordkeeping requirement required by this rule should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th St., NW., Room 725, Washington, DC 20503. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments should reference the docket number AMS–FV–08–0057; FV–08–379, the date, and the page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Trista Etzig, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0235, Washington, DC 20250–0235; *Telephone:* (202) 690–4942; *Fax:* (202) 720–0016; or *E-mail: trista.etzig@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). When such a statement is needed for a rule, section 205 of the UMRA generally requires federal agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule (2 U.S.C. 1535).

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State and local governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.170, Specialty Crop Block Grant Program—Farm Bill.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule would not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

The AMS certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601 *et seq.*). This rule only will impact State departments of agriculture that apply for grant funds. States, as defined under the SCBGP–FB, mean the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. The States are not small entities under the Act.

Authority for a Specialty Crop Block Grant Program

This program is intended to accomplish the goal of enhancing the competitiveness of specialty crops. The SCBGP–FB is authorized under section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note, amended under section 10109 of the Food, Conservation, and Energy Act of 2008, the Farm Bill). Section 10109 directs the Secretary of Agriculture to make grants to States to be used by State departments of agriculture solely to enhance the competitiveness of specialty crops. This program is separate from the Specialty Crop Block Grant Program (SCBGP) found in 7 CFR part 1290.

This rule also invites comments on the reporting and recordkeeping provisions that would be generated by this interim final rule. The information collection and recordkeeping requirements associated with this interim final rule are explained in more detail in the Paperwork Reduction Act section of this rule.

Background

On July 30, 2008, AMS published at 73 FR 44211, a Notice of Funds Availability. AMS announced the availability of approximately $10 million in grant funds, less USDA

administrative costs, to enhance the competitiveness of specialty crops. The 2008 Farm Bill makes the SCBGP–FB funds available only through the end of the fiscal year (September 30, 2008). In view of this, a shorter application period was deemed appropriate. Applications are to be received not later than September 8, 2008. The application process is discussed in the July 30, 2008 Notice of Funds Availability. This interim final rule includes additional application and State plan requirements beginning with fiscal year 2009.

Under the program established by this interim final rule, the Fruit and Vegetable Program will announce every fiscal year that applications may be submitted for participation in a ''Specialty Crop Block Grant Program—Farm Bill'', which will be administered by personnel of the Agricultural Marketing Service (AMS).

Mandatory funding will be made available to the Secretary of Agriculture to provide specialty crop block grants of $10 million for fiscal year 2008, $49 million in 2009, and $55 million in each of fiscal years 2010 through 2012, less USDA administrative costs. Each fiscal year, the AMS intends to publish a **Federal Register** notice announcing the program and soliciting grant applications. The notice will include the amount of grant funds available to each State and the application period.

For each fiscal year, each State that submits an application that is reviewed and approved by AMS is to receive at least an amount that is equal to the higher of $100,000, or ⅓ of 1 percent of the total amount of funding made available for that fiscal year to enhance the competitiveness of specialty crops. In addition, each State will receive an amount that represents the proportion of the value of specialty crop production in the state in relation to the national value of specialty crop production using the latest available complete specialty crop production data set in all states whose applications are accepted.

All 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands are eligible to participate. SCBGP applications will be accepted from any State department of agriculture, as defined under the SCBGP–FB, which means the agency, commission, or department of a State government responsible for agriculture within the State.

''Specialty crops'' for the purpose of this rule, means fruits and vegetables, tree nuts, dried fruits, horticulture and nursery crops (including floriculture). The inclusion of horticulture means turfgrass sod is a covered commodity.

Section 1291.4 prescribes that grant funds shall be used to enhance the competitiveness of eligible specialty crops and benefit the specialty crop industry and/or the public. For a list of eligible specialty crops and ineligible commodities, please refer to the SCBGP Guidelines available on the SCBGP Web site at *http://www.ams.usda.gov/fv.*

Section 1291.7 prescribes application procedures that include a State plan to indicate how grant funds will be utilized to enhance the competitiveness of specialty crops. For guidance on completing the application, please refer to the SCBGP Guidelines available on the SCBGP Web site at *http://www.ams.usda.gov/fv.*

State departments of agriculture are encouraged to conduct outreach to specialty crop producers, including socially disadvantaged and beginning farmers of specialty crops and develop their State plans through a competitive process to ensure maximum public input and benefit. States are also encouraged to include multi-state and regional proposals.

Section 1291.10 prescribes that States who do not apply for or do not request all available funding during the specified grant application period will forfeit all or that portion of available funding not requested for that application year. Funds not obligated will be allocated pro rata to the remaining States who applied during the specified grant application period to be solely expended on projects previously approved in their State plan.

AMS is inviting comments on this interim final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the AMS has requested emergency review and approval by the Office of Management and Budget of a new information collection.

Title: Specialty Crop Block Grant Program—Farm Bill.

OMB Number: 0581-New.

Type of Request: New Information Collection.

Expiration Date of Approval: 3 years from date of OMB approval.

Abstract: The information collection requirements in this request are applied only to those State departments of agriculture who voluntarily participate in the SCBGP–FB. The information collected is needed for the implementation of the SCBGP–FB, to determine a State department of agriculture's eligibility in the program, and to certify that grant participants are complying with applicable program regulations. Data collected is the minimum information necessary to effectively carry out the requirements of the program, and to fulfill the intent of Section 101 of the Competitiveness Act of 2004, as amended by Section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, the Farm Bill.

State departments of agriculture who wish to participate in the SCBGP–FB would have to submit the following:

(a) SF–424, ''Application for Federal Assistance'', (approved under OMB collection number 4040–0004) is required to apply for federal assistance.

(b) SF–424A, ''Budget Information-Non-Construction Programs,'' (approved under OMB collection number 0348–0044) is required to show each project's budget breakdown.

(c) Form SF–424B, ''Assurances-Non-Construction Programs'', (approved under OMB collection number 0348–0040) to assure the Federal government of the applicant's legal authority to apply for Federal assistance.

(d) State Plan Narrative. Completed applications must include a State Plan Narrative to show how grant funds will be utilized to enhance the competitiveness of specialty crops.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56 (All 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands).

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 560 hours.

Before funds are dispersed, State departments of agriculture must complete the following forms:

(a) Form AD–1047, ''Certification Regarding Disbarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.'' This form must have the grantee's original signature.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .20 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11.20 hours.

(b) Form AD–1048, ''Certification Regarding Disbarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.'' The grantee keeps this document for their records.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .20 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11.20 hours.

(c) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals.'' This form must have the grantee's original signature.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .20 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11.20 hours.

(d) Form SF–LLL, ''Disclosure of Lobbying Activities,'' (approved under OMB collection number 0348–0046). This form must have the grantee's original signature.

Additionally, State departments of agriculture must also complete the following forms and paperwork for AMS:

(a) Grant Agreement. The Grant Agreement sets forth the agreed upon responsibilities of AMS project work. It also indicates the agreed upon grant funding dollar amounts and the beginning date and ending date of the project work and the Grant Agreement. Four (4) copies of this Grant Agreement are required with the grantee's signatures and dated for each grant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .08 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4.65 hours.

(b) Form SF–270, ''Request for Advance and Reimbursement'' (approved under OMB collection number 0348–0004) is required whenever the grantees request an advance or reimbursement of Federal grant funds. AMS expects that at least three (3) SF–270 forms will be submitted during the grant agreement period.

(c) Annual Performance Report. The Annual Performance Report is required if a grant period is more than one year in length. The Annual Performance Report is written documentation required to notify AMS about the work activities and progress towards completing the grantee's and subgrantee's established project activities, goals and outcomes. AMS expects that at least two (2) Annual Performance Reports will be submitted during the grant agreement period.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 112.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 336 hours.

(d) Final Performance Report. The Final Performance Report is written information required by AMS within 90 days after the ending date of the grant agreement. This information is utilized as final documentation of completion of the project activities, goals and outcomes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 336 hours.

(e) Request for Grant Period Extension. If the grant period goes beyond 3 calendar years, a grantee would have to submit in writing to AMS requesting a grant period extension.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .17 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 6.

Estimated Number of Responses: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.02 hours.

(f) SF–269 ''Financial Status Report'', if the project had program income (Long Form approved under OMB collection number 0348–0039), or SF–269A ''Financial Status Report'' (Short Form approved under OMB collection number 0348–0038) is to be completed 90 days after the expiration date of the grant period to comply with various legal and regulatory requirements as described within the form.

(g) Audit Report. A State is required to conduct an audit of SCBGP expenditures and an audit report is required to be submitted to AMS no later than 30 days after completion of the audit.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: State departments of agriculture.

Estimated Number of Respondents: 56.

Estimated Number of Responses: 56.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 168 hours.

Finally, State departments of agriculture are required to retain records pertaining to the SCBGP for 3 years after completion of the grant period or until final resolution of any audit findings or litigation claims relating to the SCBGP. This is a part of normal business practice.

This program would not be maintained by any other Agency, therefore, the requested information will not be available from any other existing records.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For paper submissions, the SF and AD forms can be filled out electronically and printed out for submission with original signatures. The State Plan (Narrative) can be filled out electronically and printed out for submission. For grants.gov submissions, all SF and AD forms, as well as the State Plan (Narrative) can be filled out electronically and submitted as an attachment.

The Annual Performance Report, Final Performance Report, Audit Report,

and Request for Grant Period Extension can be submitted electronically. The Grant Agreement requires an original signature and can be submitted by mail.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments on the information collection must be posted online at *http://www.regulations.gov*; or sent to Docket Clerk, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0235, 1400 Independence Avenue, SW., Washington, DC 20250–0235; *Fax:* (202) 720–0016; or *E-mail: scblockgrants@usda.gov.* In addition, comments concerning the information collection and recordkeeping requirement required by this rule should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th St., NW., Room 725, Washington, DC 20503. All comments to this information collection and recordkeeping requirement will be summarized in the final rule. All comments should reference the docket number AMS–FV–08–0057; FV–08–379, the date, and the page number of this issue of the **Federal Register**. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this information collection.

Effective Date

It has been determined that this rule should be issued as an interim rule. The Specialty Crop Block Grant Program is authorized by section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note; amended under section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, the Farm Bill). Section 10109 of the Farm Bill directs the Secretary of Agriculture to make available $10 million in fiscal year 2008, $49 million in fiscal year 2009, and $55 million in fiscal years 2010 through 2012 to provide specialty crop block grants. This rule implements changes in the Farm Bill to the SCBGP, authorized by section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note). Because the Farm Bill was only recently enacted and requires the Secretary of Agriculture to make available approximately $10 million in grant funds in fiscal year 2008, which ends September 30, 2008, pursuant to 5 U.S.C. 553, it is found, and determined, upon good cause, that it is impracticable and contrary to the public interest to give further notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this interim final rule until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1291

Specialty crop block grants, Agriculture, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, and under authority of 7 U.S.C. 1621 note, amended under Section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, Title 7, Chapter XI of the Code of Federal Regulations is amended by adding part 1291 to read as follows:

PART 1291—SPECIALTY CROP BLOCK GRANT PROGRAM—FARM BILL

Sec.

1291.1 Purpose and scope.
1291.2 Definitions.
1291.3 Eligible grant applicants.
1291.4 Eligible grant project.
1291.5 Restrictions and limitations on grant funds.
1291.6 Completed application.
1291.7 Review of grant applications.
1291.8 Grant agreements.
1291.9 Unobligated funds.
1291.10 Reporting and oversight requirements.
1291.11 Audit requirements.

Authority: 7 U.S.C. 1621 note, as amended.

§ 1291.1 Purpose and scope.

Pursuant to the authority conferred by Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note), as amended by Section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, AMS will make grants to States to enhance the competitiveness of specialty crops in accordance with the terms and conditions set forth herein and other applicable federal statutes and regulations, including, but not limited to, 7 CFR Part 3015 and Part 3016.

§ 1291.2 Definitions.

(a) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(b) *Application* means the application for Specialty Crop Block Grant Program—Farm Bill.

(c) *Enhancing the competitiveness* of specialty crops means, but is not limited to: Research, food safety, food security, plant health programs, education, nutrition, trade enhancement, promotion, marketing, ''buy local'' programs, increased consumption, increased innovation, improved efficiency and reduced costs of distribution systems, environmental concerns and conservation, product development, and developing cooperatives.

(d) *Grant period* means the period of time from when the grant agreement is signed to the completion of all SCBGP–FB projects submitted in the State plan.

(e) *Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant agreement.

(f) *Indirect costs* means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

(g) *Outcome measure* means an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public.

(h) *Project* means all proposed activities to be funded by the SCBGP–FB.

(i) *Specialty crop* means fruit and vegetables, tree nuts, dried fruits, horticulture and nursery crops (including floriculture).

(j) *State* means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(k) *State department of agriculture* means the agency, commission, or department of a State government responsible for agriculture within the State.

(l) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of funds provided.

§ 1291.3 Eligible grant applicants.

Eligible grant applicants are State departments of agriculture from the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

§ 1291.4 Eligible grant project.

(a) To be eligible for a grant, the project(s) must enhance the competitiveness of U.S. grown or U.S. territory grown eligible specialty crops, in either domestic or foreign markets.

(b) To be eligible for a grant, the project(s) must be completed within three calendar years after the grant agreement prescribed in § 1291.8 of this part is signed. The grant period is established by the longest approved project submitted in the State plan. However, for cause, an extension of the grant period not to exceed three years may be granted by AMS on a case by case basis with a written request from the State.

(c) Projects should benefit the specialty crop industry and/or the public rather than a single organization, institution, individual, or commercial product. Single organizations, institutions, and individuals are eligible to participate as project partners.

(d) Multi-state projects that address solutions to problems that cross state boundaries are eligible.

§ 1291.5 Restrictions and limitations on grant funds.

(a) Grant funds may not be used to fund political activities in accordance with provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7321–7326).

(b) Development or participation in lobbying activities pursuant to 31 U.S.C. 1352 including costs of membership in organizations substantially engaged in lobbying are unallowable.

(c) Grant funds shall supplement the expenditure of State funds in support of specialty crops grown in that State, rather than replace State funds.

(d) Grantees and subgrantees must comply with 7 CFR Part 3015.

§ 1291.6 Completed application.

Completed applications shall be clear and succinct and shall include the following documentation satisfactory to AMS.

(a) One SF–424 ''Application for Federal Assistance''.

(b) One SF–424A ''Budget Information-Non-Construction Programs.'' This form is required for applications submitted after September 30, 2008.

(c) One SF–424B ''Assurances-Non-Construction Program.''

(d) Completed applications must also include one State plan to show how grant funds will be utilized to enhance the competitiveness of specialty crops. The state plan shall include the following for each project:

(1) *Cover page and granting processes.* Include the point of contact and lead agency for administering the plan. If outreach was performed to specialty crop producers, including socially disadvantaged and beginning farmers of specialty crops regarding the SCBGP–FB, provide a description of the affirmative steps taken to perform this outreach to these groups. The description should include the methods used for identifying these groups and the methods used to reach out to them. Identify if an award was made to either a socially disadvantaged or beginning farmer. If outreach to these groups was not performed, explain why not. Indicate if a competitive process was used to solicit and evaluate grant proposals from all interested parties. If a competitive process was not used to solicit and evaluate grant proposals, explain why not. This paragraph (d)(1) is required for applications submitted after September 30, 2008.

(2) *Project title and abstract.* Include the title of the project and an abstract of 200 or fewer words.

(3) *Project purpose.* Clearly state the purpose of the project. Describe the specific issue, problem, interest, or need to be addressed. Explain why the project is important and timely. If a proposal builds on a previous SCBGP or SCBGP–FB project, indicate clearly how the new proposal complements previous work. Indicate if the proposal will be or has been submitted to another Federal grant program.

(4) *Potential impact.* Discuss the number of people or operations affected, the intended beneficiaries of each project, and/or potential economic impact if such data are available and relevant to the project.

(5) *Expected Measurable Outcomes.* Describe at least one distinct, quantifiable, and measurable outcome-oriented objective that directly and meaningfully supports the project's purpose. The measurable outcome-oriented objective must define an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public. Outcome measures may be long term that exceed the grant period. Describe how performance toward meeting outcomes will be monitored. For applications submitted after September 30, 2008, include a performance-monitoring plan to describe the process of collecting and analyzing data to meet the outcome-oriented objectives.

(6) *Work Plan.* Explain briefly the activities that will be performed to accomplish the objectives of the project. Be clear about who will do the work. Include appropriate time lines.

(7) *Budget Narrative.* Indirect costs should not exceed 10 percent of any proposed budget. Provide a justification if indirect costs exceed 10 percent. For applications submitted after September 30, 2008, provide in sufficient detail information about the budget categories listed on SF–424A to demonstrate that grant funds are being expended on eligible grant activities that meet the purpose of the program.

(8) *Project Oversight.* Describe the oversight practices that provide sufficient knowledge of grant activities to ensure proper and efficient administration.

(9) *Project Commitment.* Describe how all grant partners commit to and work toward the goals and outcome measures of the proposed project(s).

(10) *Multi-State Projects.* If the project is a multi-state project, describe how the States are going to collaborate effectively with related projects with one state assuming the coordinating role. Indicate the percent of the budget covered by each State.

§ 1291.7 Review of grant applications.

(a) Applications will be reviewed and approved or rejected as appropriate for conformance with the provisions in § 1291.6 of this part. AMS may request the applicant provide additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered.

§ 1291.8 Grant agreements.

(a) After approval of a grant application, AMS will enter into a grant agreement with the State department of agriculture.

(b) AMS grant agreements will include at a minimum the following:

(1) The projects in the approved State plan.

(2) Total amount of Federal financial assistance that will be advanced.

(3) Beginning and end dates of the grant agreement period.

(4) Terms and conditions pursuant to which AMS will fund the project(s).

§ 1291.9 Unobligated funds.

(a) States who do not apply for or do not request all available funding during the specified grant application period will forfeit all or that portion of available funding not requested for that application year.

(b) Funds not obligated will be allocated, by a date as determined by the Secretary, pro rata to the remaining States who applied during the specified grant application period to be solely expended on projects previously approved in their State plan.

§ 1291.10 Reporting and oversight requirements.

(a) An annual performance report will be required of all State departments' of agriculture within 90 days after the completion of the first year of the project(s), until the expiration date of the grant agreement. If the grant period is one year or less, then only a final performance report is required (See paragraph (b) of this section). The annual performance report shall include the following:

(1) *Activities Performed.* Briefly summarize activities performed, targets, and/or performance goals achieved during the reporting period to meet measurable outcomes for each project.

(2) *Problems and Delays.* Note unexpected delays or impediments for each project.

(3) *Future Project Plans.* Outline work to be performed during the next reporting period for each project.

(4) *Funding Expended To Date.* Comment on the level of grant funds expended to date for each project.

(b) A final performance report will be required of all State departments of agriculture within 90 days following the expiration date of the grant period. The final progress report shall include the following:

(1) *Project Summary.* An outline of the issue, problem, interest, or need for each project.

(2) *Project Approach.* How the issue or problem was approached via each project.

(3) *Goals and Outcomes Achieved.* How the performance goals and measurable outcomes were achieved for each project(s). If outcome measures were long term, summarize the progress that has been made towards achievement.

(4) *Beneficiaries.* Description and quantitative data for the number of people or operations that have benefited from the project's accomplishments, and/or the potential economic impact of each project.

(5) *Lessons Learned.* Lessons learned, results, conclusions, for each project. If outcome measures were not achieved, identify and share the lessons learned to help expedite problem-solving.

(6) *Contact Person.* List the contact person for each project with telephone number and email address.

(7) *Additional Information.* Include other relevant project information available (e.g. publications, Web sites, photographs).

(c) A final SF–269A ''Financial Status Report (Short Form)'' or SF–269 ''Financial Status Report (Long Form)'' if the project(s) had program income, is required within 90 days following the expiration date of the grant period.

(d) AMS will monitor States, as it determines necessary, to assure that projects are completed in accordance with the approved State plan. If AMS, after reasonable notice to a State, and opportunity to be heard, finds that there has been a failure by the State to comply substantially with any provision or requirement of the State plan, AMS may disqualify, for one or more years, the State from receipt of future grants under the SCBGP.

(e) States shall diligently monitor performance to ensure that time schedules are being met, project work within designated time periods is being accomplished, and other performance measures are being achieved.

§ 1291.11 Audit requirements.

Each year that a State receives a grant under the SCBGP–FB, the State is required to conduct an audit of the expenditures of SCBGP–FB funds. If the Single Audit Act applies to an eligible grantee, the State shall submit the annual audit results to AMS within 30 days after completion of the audit. If the Single Audit Act does not apply, the State shall conduct an audit of all SCBGP–FB funds no later than 60 days after the end date of the grant agreement. The State shall submit to AMS not later than 30 days after completion of the audit, a copy of the audit results.

Dated: August 28, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–20486 Filed 9–3–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30626; Amdt. No. 476]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, September 25, 2008.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, 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 amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC on August 27, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, September 25, 2008.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 476

[Effective date September 25, 2008]

From	To	MEA
§ 95.1001 DIRECT ROUTES—U.S. COLOR ROUTES		
§ 95.10 AMBER FEDERAL AIRWAY A6		
IS ADDED TO READ:		
ST MARYS, AK NDB	NORTH RIVER, AK NDB	5000

From	To	MEA	MAA
§ 95.4000 HIGH ALTITUDE RNAV ROUTES			
§ 95.4110 RNAV ROUTE Q110			
IS AMENDED BY ADDING:			
THNDR, FL FIX *18000—GNSS MEA. #DME/DME/IRU RNAV MEA.	KPASA, FL FIX	#*18000	45000
§ 95.4257 RNAV ROUTE T257			
IS ADDED TO READ:			
BIG SUR, CA VORTAC	ISIFU, CA FIX	7300	17500
ISIFU, CA FIX	SUTRO, CA FIX	4900	17500
SUTRO, CA FIX	POINT REYES, CA VORTAC	4000	17500
§ 95.4259 RNAV ROUTE T259			
IS ADDED TO READ:			
SAN JOSE, CA VOR/DME	CEDES, CA FIX	6200	17500
CEDES, CA FIX	MOVDD, CA FIX	5900	17500
MOVDD, CA FIX	SACRAMENTO, CA VORTAC	3200	17500
§ 95.4261 RNAV ROUTE T261			
IS ADDED TO READ:			
WOODSIDE, CA VORTAC	ALTAM, CA FIX	5000	17500
§ 95.4263 RNAV ROUTE T263			
IS ADDED TO READ:			
SUNOL, CA FIX	SCAGGS ISLAND, CA VORTAC	4600	17500
§ 95.4274 RNAV ROUTE T274			
IS ADDED TO READ:			
NEWPORT, OR VORTAC *5000—MCA CRAAF, OR FIX, SW BND.	*CRAAF, OR FIX	5500	17500

From	To	MEA
§ 95.6001 VICTOR ROUTES—U.S.		
§ 95.6005 VOR FEDERAL AIRWAY V5		
IS AMENDED TO READ IN PART:		

From	To	MEA
#APPLETON, OH VORTAC #R–006 UNUSABLE.	MANSFIELD, OH VORTAC	3000
§ 95.6006 VOR FEDERAL AIRWAY V6		
IS AMENDED TO READ IN PART:		
MUSTANG, NV VORTAC	WADDS, NV FIX	10300
WADDS, NV FIX *8500—MCA LOVELOCK, NV VORTAC, NE BND. **9500—MOCA.	*LOVELOCK, NV VORTAC	**10000
§ 95.6013 VOR FEDERAL AIRWAY V13		
IS AMENDED TO READ IN PART:		
*CHESO, AR FIX *5000—MRA.	RAZORBACK, AR VORTAC	3700
§ 95.6014 VOR FEDERAL AIRWAY V14		
IS AMENDED TO READ IN PART:		
BUFFALO, NY VOR/DME	GENESEO, NY VOR/DME	4000
§ 95.6017 VOR FEDERAL AIRWAY V17		
IS AMENDED TO READ IN PART:		
GARDEN CITY, KS VORTAC *9000—MRA. **4600—MOCA.	*COFFE, KS FIX	**5500
§ 95.6023 VOR FEDERAL AIRWAY V23		
IS AMENDED TO READ IN PART:		
SACRAMENTO, CA VORTAC *1600—MOCA.	GRIME, CA FIX	*2000
GRIME, CA FIX *2000—MOCA.	YUBBA, CA FIX	*4000
YUBBA, CA FIX *4000—MRA. **3400—MOCA.	*GRIDD, CA FIX	**4000
GRIDD, CA FIX *1700—MOCA.	RED BLUFF, CA VORTAC	*3000
§ 95.6043 VOR FEDERAL AIRWAY V43		
IS AMENDED TO READ IN PART:		
#APPLETON, OH VORTAC #R–055 UNUSABLE.	TIVERTON, OH VOR/DME	3000
§ 95.6051 VOR FEDERAL AIRWAY V51		
IS AMENDED TO READ IN PART:		
NABB, IN VORTAC	SHELBYVILLE, IN VORTAC	3000
§ 95.6084 VOR FEDERAL AIRWAY V84		
IS AMENDED TO READ IN PART:		
BUFFALO, NY VOR/DME	GENESEO, NY VOR/DME	4000
§ 95.6113 VOR FEDERAL AIRWAY V113		
IS AMENDED TO READ IN PART:		
MUSTANG, NV VORTAC	NICER, NV FIX	10300
NICER, NV FIX *10600—MOCA.	ROBUD, NV FIX	*12000
ROBUD, NV FIX *9000—MOCA.	SOD HOUSE, NV VORTAC	*10000
§ 95.6171 VOR FEDERAL AIRWAY V171		
IS AMENDED TO READ IN PART:		
EMILS, MN FIX *3000—GNSS MEA.	FARMINGTON, MN VORTAC	*5500
FARMINGTON, MN VORTAC *2500—MOCA. #*3000—GNSS MEA.	JONNA, MN FIX	#*3500

From	To	MEA
JONNA, MN FIX	DARWIN, MN VORTAC	2900
§ 95.6184 VOR FEDERAL AIRWAY V184		
IS AMENDED TO READ IN PART:		
PANZE, NJ FIX	FALON, NJ FIX	#*5000
*1500—MOCA.		
#*2000—GNSS MEA.		
FALON, NJ FIX	ZIGGI, NJ FIX	*2500
*1600—MOCA.		
§ 95.6195 VOR FEDERAL AIRWAY V195		
IS AMENDED TO READ IN PART:		
WILLIAMS, CA VORTAC	JINGO, CA FIX	*3000
*2000—MOCA.		
JINGO, CA FIX	RED BLUFF, CA VORTAC	*3000
*1700—MOCA.		
§ 95.6208 VOR FEDERAL AIRWAY V208		
IS AMENDED TO READ IN PART:		
PACIF, CA FIX	OCEANSIDE, CA VORTAC	3000
§ 95.6221 VOR FEDERAL AIRWAY V221		
IS AMENDED TO READ IN PART:		
#HOOSIER, IN VORTAC	SHELBYVILLE, IN VORTAC	*6000
*3000—MOCA.		
#R–053 UNUSABLE.		
§ 95.6232 VOR FEDERAL AIRWAY V232		
IS AMENDED TO READ IN PART:		
CHARDON, OH VOR/DME	HAGAR, PA FIX	3300
HAGAR, PA FIX	FRANKLIN, PA VOR	3300
§ 95.6244 VOR FEDERAL AIRWAY V244		
IS AMENDED TO READ IN PART:		
*NIKOL, CA FIX	COALDALE, NV VORTAC	12500
*13000—MCA NIKOL, CA FIX, W BND.		
LAMAR, CO VORTAC	*COFFE, KS FIX	**9000
*9000—MRA.		
**5400—MOCA.		
§ 95.6292 VOR FEDERAL AIRWAY V292		
IS AMENDED TO READ IN PART:		
SAGES, NY FIX	*WIGAN, NY FIX	#**10000
*4500—MRA.		
**6400—MOCA.		
#7000—GNSS MEA.		
WIGAN, NY FIX	BARNES, MA VORTAC	#**10000
**4900—MOCA.		
#5000—GNSS MEA.		
BARNES, MA VORTAC	GLYDE, MA FIX	#*7000
*2700—MOCA.		
#4000—GNSS MEA.		
§ 95.6365 VOR FEDERAL AIRWAY V365		
IS AMENDED TO READ IN PART:		
*BOZEMAN, MT VOR/DME	**MENAR, MT FIX	8700
*9300—MCA BOZEMAN, MT VOR/DME, SE BND.		
**9200—MCA MENAR, MT FIX, NW BND.		
MENAR, MT FIX	SWEDD, MT FIX	*10000
*9400—MOCA.		
§ 95.6434 VOR FEDERAL AIRWAY V434		
IS AMENDED TO READ IN PART:		
PEORIA, IL VORTAC	CHAMPLAIN, IL VORTAC	2800

From	To	MEA
§ 95.6458 VOR FEDERAL AIRWAY V458		
IS AMENDED TO READ IN PART:		
PACIF, CA FIX	OCEANSIDE, CA VORTAC	3000
§ 95.6523 VOR FEDERAL AIRWAY V523		
IS AMENDED TO READ IN PART:		
#APPLETON, OH VORTAC #R–055 UNUSABLE.	TIVERTON, OH VOR/DME	3000
§ 95.6525 VOR FEDERAL AIRWAY V525		
IS AMENDED TO READ IN PART:		
#APPLETON, OH VORTAC #R–055 UNUSABLE.	TIVERTON, OH VOR/DME	3000
§ 95.6536 VOR FEDERAL AIRWAY V536		
IS AMENDED TO READ IN PART:		
SWEDD, MT FIX *9200—MCA MENAR, MT FIX, NW BND. **9400—MOCA.	*MENAR, MT FIX	**10000
MENAR, MT FIX *9300—MCA BOZEMAN, MT VOR/DME, SE BND.	*BOZEMAN, MT VOR/DME	8700
§ 95.6563 VOR FEDERAL AIRWAY V563		
IS AMENDED TO READ IN PART:		
LUBBOCK, TX VORTAC	BIG SPRING, TX VORTAC	5200
§ 95.6351 ALASKA VOR FEDERAL AIRWAY V351		
IS ADDED TO READ:		
DILLINGHAM, AK VOR/DME	PORT HEIDEN, AK NDB/DME	3000
§ 95.641 ALASKA VOR FEDERAL AIRWAY V414		
IS ADDED TO READ:		
GAMBELL, AK NDB	KUKULIAK, AK VOR	3000
§ 95.6477 ALASKA VOR FEDERAL AIRWAY V477		
IS AMENDED TO READ IN PART:		
HUSLIA, AK VOR/DME	ATAGO, AK FIX	
	E BND	*3500
	W BND	*4000
*2500—MOCA.		
ATAGO, AK FIX	DESOY, AK FIX	4000
DESOY, AK FIX	SELAWIK, AK VOR/DME	
	W BND	2500
	E BND	4000
§ 95.6619 ALASKA VOR FEDERAL AIRWAY V619		
IS ADDED TO READ:		
PORT HEIDEN, AK NDB/DME	SALDO, AK NDB	4000
SALDO, AK NDB	DILLINGHAM, AK VOR/DME	3000

From	To	MEA	MAA
§ 95.7001 JET ROUTES **§ 95.7211 JET ROUTE J211**			
IS AMENDED TO READ IN PART:			
#YOUNGSTOWN, OH VORTAC #R–130 UNUSABLE ABOVE 24000.	JOHNSTOWN, PA VORTAC	18000	45000

From	To	Distance	From
§ 95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS V221			
IS AMENDED TO DELETE:			
HOOSIER, IN, VORTAC	SHELBYVILLE, IN, VORTAC	15	HOOSIER

[FR Doc. E8–20443 Filed 9–3–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–5129–F–02]

RIN 2502–AI49

Home Equity Conversion Mortgages (HECMs): Determination of Maximum Claim Amount; and Eligibility for Discounted Mortgage Insurance Premium for Certain Refinanced HECM Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, an interim rule that made two technical changes to HUD's Home Equity Conversion Mortgage (HECM) program. First, the interim rule extended the date for calculating the maximum claim amount in the HECM program from the date of the underwriter's receipt of the appraisal report to the date of closing. This change provides a more easily verifiable and more easily identifiable date. Second, the interim rule corrected an unintended consequence that results in a situation where HECM loans that are not in default but have been assigned pursuant to regulatory provisions, and remain in effect, are not eligible to be refinanced with a discounted initial mortgage insurance premium (MIP). The interim rule permitted such HECM loans to be eligible for the discounted initial MIP upon refinancing, in accordance with the purpose of the HECM program, which is to improve the financial situation of elderly homeowners. HUD received one public comment in response to a solicitation of comments on the interim rule, which was supportive of the interim rule.

DATES: *Effective Date:* October 6, 2008.

FOR FURTHER INFORMATION CONTACT: James Beavers, Deputy Director, Single Family Program Development, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The statutory and regulatory background to this rule is fully discussed in the preamble to the January 8, 2008, interim rule at 73 FR 1434–1435. HUD's Home Equity Conversion Mortgage (HECM) statute is at section 255 of the National Housing Act, 12 U.S.C. 1715z–20.

The January 2008 interim rule revised the point in time at which the appraised value of the property and the maximum dollar amount for an area under 12 U.S.C. 1709(b)(2) are compared to determine the maximum claim amount. The definition of ''maximum claim amount'' currently codified in HUD's regulations in 24 CFR 206.3 provides that both of these values ''must be as of the date the Direct Endorsement Lender or Lender Insurance Underwriter receives the appraisal report.'' For reasons described in the January 8, 2008, interim rule, however, the date is changed to the date of loan closing.

The interim rule also addressed an issue in the HECM program in which refinanced HECM notes assigned to HUD under assignment provisions at § 206.107(a)(1) (election of assignment or shared premium option) and § 206.121(b) (assignment to HUD when the mortgagee is unable or unwilling to make payments to mortgagor), but not in default, could not be insured at the reduced initial mortgage insurance premium (MIP) rates applicable to refinanced HECM loans. The interim rule clarified that refinanced HECM loans in these categories are also eligible for mortgage insurance at the reduced rate.

II. This Final Rule

This final rule adopts the interim rule without change. The following provides a summary of the regulatory amendments made by the interim rule, and adopted without change by the final rule.

- The interim rule removed the second sentence of 24 CFR 206.3, and revised the first sentence to read:

> *Maximum claim amount* means the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act) as of the date of loan closing.

- The interim rule revised the last sentence of § 206.53(a) to remove the term ''presently'' and clarify that the refinancing provisions apply to ''existing'' HECM loans, including those assigned under §§ 206.107(a)(1) and 206.121(b).

III. Discussion of Public Comments

The public comment period on the January 8, 2008, interim rule closed on March 10, 2008. HUD received one comment, which supported the change made by the rule, and urged HUD to make other changes to the program regulations that would especially assist elderly minority homeowners. With no other issues for consideration at the final rule stage, HUD is adopting the interim rule without change.

IV. Findings and Certifications

Environmental Impact

The final rule involves external administrative or fiscal requirements or procedures that are related to loan limits and rate or cost determinations and that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule would not have a significant impact on entities, because the establishment of a date of maximum claim amount is an automated process and merely changing the date as of which the calculation is made imposes no additional burden on any entity. Allowing for discounted MIPs for refinancings provides a benefit to borrowers and presents no impact on any business entities.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism

implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ Accordingly, the interim rule amending 24 CFR part 206, which was published at 73 FR 1434 on January 8, 2008, is adopted as a final rule without change.

Dated: August 22, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–20471 Filed 9–3–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0843]

RIN 1625–AA00

Safety Zone: Wantagh Parkway 2 Bridge over the Goose Creek Channel, Town of Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Goose Creek Channel surrounding the Wantagh Parkway 2 Bridge located in the Town of Hempstead, New York. This safety zone is necessary to protect vessels transiting in the area from hazards imposed by construction barges and equipment. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound, New Haven, CT.

DATES: This rule will be effective from 12:01 a.m. on September 2, 2008 until 11:59 p.m on December 31, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0843 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: 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, USCG Sector Long Island Sound, 120 Woodward Ave., New Haven, CT 06512 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LT Douglas Miller, USCG Sector Long Island Sound, Chief Waterways Management at 203–468–4569. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because unforeseen delays in the construction and removal of the Wantagh 3 Bridge forced the original construction dates for the Wantagh 2 Bridge to be modified which in turn makes the publication of a notice of proposed rulemaking and associated comment period impractical; additional repair and replacement work are needed to ensure the continued safe operation of the bridge.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A delay is not in the public interest as this safety zone is necessary to allow for completion of this bridge construction project.

Background and Purpose

Currently, the New York Department of Transportation is modifying the existing bascule and flanking spans of the Wantagh 2 Bridge located over the Goose Creek Channel in the Town of Hempstead, NY. These modifications are needed to ensure the continued safe operation of the bridge. To complete the modifications on the bridge, barges will need to block the waterway during the course of the project. To ensure the continued safety of the boating community, the Coast Guard is establishing a safety zone in all waters of Goose Creek Channel within 100-yards of the Wantagh Parkway Number 2 Bridge. This safety zone is necessary to protect the safety of the boating community who wish to utilize the Goose Creek channel. Vessels may utilize the Sloop Channel as an alternative route to using the Goose Creek Channel, adding minimal additional transit time. Marine traffic may also transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Goose Creek Channel, except the portion delineated by this rule.

Discussion of Rule

This regulation establishes a temporary safety zone on the Goose Creek Channel within 100-yards to either side of the Wantagh 2 Bridge. This action is intended to prohibit vessel traffic in a portion of the Goose Creek Channel within 100 yards of the Wantagh 2 Bridge in the Town of Hempstead, NY and to provide for the safety of the boating community due to the hazards posed by construction equipment located in the waterway during the modification of the existing span.

The effective period of this safety zone will be from 12:01 a.m. September 2, 2008 to 11:59 p.m. on December 31, 2008. Marine traffic may continue to transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Goose Creek Channel, except the portion delineated by this rule. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound.

Any violation of the safety zone described herein is punishable by,

among other things, civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant mariner credentials.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: Vessels may transit in all areas of the Goose Creek Channel other than the area of the safety zone, and may utilize other routes with minimal increased transit time.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in those portions of the Goose Creek that are covered by the safety zone.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call LT Douglas Miller, Chief Waterway Management, Sector Long Island Sound, at (203) 468–4596.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation as it establishes a safety zone. A final environmental analysis checklist and a final categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0843 to read as follows:

§ 165.T01–0843 Safety Zone: Wantagh Parkway 2 Bridge over the Goose Creek Channel, Town of Hempstead, New York.

(a) *Location.* The following area is a safety zone: All navigable waters of the federal channel on the Goose Creek Channel in Town of Hempstead, NY, from surface to bottom, within 100 yards to either side of the Wantagh 2 Bridge.

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene patrol personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who has been authorized to act on the behalf of the Captain of the Port, Long Island Sound.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

(3) All persons and vessels must comply with the Coast Guard Captain of the Port or the designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16 or via phone at (203) 468–4401.

(d) *Effective Period.* This rule is effective from 12:01 a.m. on September 2, 2008 to 11:59 p.m on December 31, 2008.

Dated: August 15, 2008.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. E8–20480 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1001; FRL–8709–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; NO_X and SO_2 Emissions Limitations for Fifteen Coal-Fired Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to regulations for emission limitations at 15 Maryland power plants. The intended effect of this action is to approve, with one exception, Maryland's regulation which establishes statewide tonnage caps for emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) from 15 coal-fired electric generating units (EGUs). The exception pertains to a portion of the rule that Maryland requested EPA take no further action on. The provision, which EPA has determined has no impact on the rule that is being finalized today, will be withdrawn in a separate notice. This SIP action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on October 6, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–1001. All documents in the docket are listed in the *www.regulations.gov* Web Site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 6, 2006, Maryland signed into law the Healthy Air Act (Ch. 23, Acts of 2006). The Healthy Air Act establishes limits on the amount of NO_X and SO_2 emissions that affected facilities can emit, and does not permit the use of allowances to achieve compliance. To implement the Healthy Air Act, the Maryland Department of the Environment (MDE) adopted COMAR 26.11.27, Emission Limitations for Power Plants. These regulations require the installation of on-site pollution controls at 15 Maryland power plants and will ensure that appropriate local emission reductions will occur where they are needed in order to attain the 8-hour ozone and fine particulate matter National Ambient Air Quality Standards (NAAQS) by 2010.

A formal SIP revision (#07–10) was submitted by MDE on July 12, 2007. On January 10, 2008 (73 FR 1851), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of emission limitations and related requirements for NO_X and SO_2 at 15 coal-fired electric generating units in Maryland. No public comments were received on the NPR.

On June 23, 2008, MDE submitted a letter withdrawing a portion of the July 12, 2007 submittal. The withdrawal is only for COMAR 26.11.27.03B(7)(a)(iii). This provision requires a unit that exceeds its ozone season NO_X emissions

limit to surrender ozone season NO_X allowances equivalent to the number of tons of NO_X emitted in excess of the limit. The June 23, 2008 letter requested that EPA finalize its rulemaking with respect to the rest of the SIP Revision that is not withdrawn. EPA determined that removal of regulation COMAR 26.11.27.03B(7)(a)(iii) does not impact the rest of the requirements in COMAR 26.11.27, and is severable. By separate action, EPA will withdraw this provision as requested by MDE.

II. Summary of SIP Revision

The MDE is requesting that regulation COMAR 26.11.27, establishing tonnage caps for emissions of NO_X and SO_2 from 15 coal-fired EGUs in Maryland, be approved. The purpose of these regulations is to help bring Maryland into attainment with the NAAQS for 8 hour ozone and fine particulate matter by the 2010 attainment deadline. The 15 affected units are as follows:

Electric generating unit	Jurisdiction
Constellation Energy Group System	
Brandon Shores 1 & 2	Anne Arundel County.
H. A. Wagner 2 & 3	Anne Arundel County.
C. P. Crane 1 & 2	Baltimore County.
Mirant System	
Chalk Point 1 & 2	Prince George's County.
Dickerson 1, 2, & 3	Montgomery County.
Morgantown 1 & 2	Charles County.
Allegheny Energy	
R. Paul Smith 3 & 4	Washington County.

These regulations also establish monitoring and reporting requirements, and authorize the MDE to reduce or waive penalties for non-compliance under certain conditions and provide for judicial review of decisions by the MDE to grant a reduction or waiver of penalties.

III. Final Action

Maryland has met the requirements for submitting a SIP revision to limit NO_X and SO_2 emissions from 15 coal-fired EGUs. With the exception of COMAR 26.11.27.03B(7)(a)(iii), which will be withdrawn by separate action, EPA is approving the SIP revision.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Maryland's SIP revision concerning emission limitations for NO_X and SO_2 at 15 coal-fired EGUs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 20, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.27 after the existing entry for COMAR 26.11.26 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.27 Emission Limitations for Power Plants				
26.11.27.01	Definitions	7/16/07	9/4/08 [Insert page number where the document begins].	
26.11.27.02	Applicability and Exceptions	7/16/07	9/4/08 [Insert page number where the document begins].	
26.11.27.03	General Requirements	7/16/07	9/4/08 [Insert page number where the document begins].	Exceptions: Paragraphs .03B(7)(a)(iii) and .03D; the word "and" at the end of paragraph .03B(7)(a)(ii).
26.11.27.05	Monitoring and Reporting Requirements.	7/16/07	9/4/08 [Insert page number where the document begins].	
26.11.27.06	Judicial Review of Penalty Waivers.	7/16/07	9/4/08 [Insert page number where the document begins].	
*	*	*	*	*

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[FR Doc. E8–20000 Filed 9–3–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XK24

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the fourth seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 2008, through 1200 hrs, A.l.t., October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The fourth seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 150 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., September 1, 2008, through 1200 hrs, A.l.t., October 1, 2008.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the fourth seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species." This inseason action does not apply to

fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason action does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 28, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 29, 2008.

Emily H. Menashes,

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

[FR Doc. E8–20509 Filed 8–29–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XK25

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to fully use the C season allowance of the 2008 total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2008, through 1200 hrs, A.l.t., October 1, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 15, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XK25, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on August 26, 2008 (73 FR 50887, August 29, 2008).

NMFS has determined that approximately 3,500 mt of pollock remain in the directed fishing allowance in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2008 TAC of pollock in Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 28, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for

pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 15, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: August 29, 2008.

Emily H. Menashes,

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

[FR Doc. E8–20512 Filed 8–29–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 172

Thursday, September 4, 2008

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 39

[Docket No. FAA–2008–0827; Directorate Identifier 2008–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80A Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for GE CF6–80A series turbofan engines with certain stage 1 high-pressure turbine (HPT) rotor disks, installed. This proposed AD would require removal from service of those stage 1 HPT rotor disks within 30 days after the effective date of the AD. This proposed AD results from the FAA learning that those disks are susceptible to cracks developing in the bottoms of the dovetail slots. We are proposing this AD to prevent cracks developing in the bottoms of the dovetail slots that could propagate to a failure of the disk and cause an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by November 3, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov*; *telephone:* (781) 238–7773, *fax:* (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0827; Directorate Identifier 2008–NE–26–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

During discussions with GE, we recently learned that a population of stage 1 HPT rotor disks thought previously to have been retired, may still be in service. These disks are subject to cracks developing in the bottoms of the dovetail slots that could propagate to a failure of the disk. These stage 1 HPT rotor disks, part numbers (P/Ns) 1380M69G01/G02/G04/G05/G06; 9234M67G12/G13/G14/G15/G16; 9362M58G04; and 9367M45G01/G03/G05/G06/G07/G08 are not subject to rework or initial inspection. This proposed AD would require that all affected stage 1 HPT rotor disks be removed from service within 30 days after the effective date of the AD. This condition, if not corrected, could result in cracks developing in the bottoms of the dovetail slots that could propagate to a failure of the disk and cause an uncontained engine failure and damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require removing the affected stage 1 HPT rotor disks from service within 30 days after the effective date of the AD.

Costs of Compliance

We estimate that this proposed AD would affect 3 out of 316 CF6–80A series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $300,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $900,240.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed 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. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

General Electric Company: Docket No. FAA–2008–0827; Directorate Identifier 2008–NE–26–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80A series turbofan engines with any of the following stage 1 high-pressure turbine (HPT) rotor disk part numbers (P/Ns), installed:

(1) 1380M69G01; 1380M69G02; 1380M69G04; 1380M69G05; or 1380M69G06; or

(2) 9234M67G12; 9234M67G13; 9234M67G14; 9234M67G15; or 9234M67G16; or

(3) 9362M58G04; or

(4) 9367M45G01; 9367M45G03; 9367M45G05; 9367M45G06; 9367M45G07; or 9367M45G08.

(d) These CF6–80A series turbofan engines are installed on, but not limited to, Airbus A310–200 series and Boeing 767–200 series airplanes.

Unsafe Condition

(e) This AD results from the FAA learning that those discs are susceptible to cracks developing in the bottoms of the dovetail slots. We are issuing this AD to prevent cracks developing in the bottoms of the dovetail slots that could propagate to a failure of the disk and cause an uncontained engine failure and damage to the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within 30 days after the effective date of this AD, unless the actions have already been done.

(g) Remove from service HPT stage 1 rotor disks identified by P/N in paragraph (c) of this AD.

Prohibition of HPT Stage 1 Rotor Disks

(h) After the effective date of this AD, do not install any of the HPT stage 1 rotor disks, listed by P/N in paragraph (c) of this AD into any engine.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov*; *telephone:* (781) 238–7773, *fax:* (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on August 28, 2008.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–20497 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Chicago, IL, Class B Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of meetings.

SUMMARY: On July 30, 2008, a notice to conduct informal airspace meetings for the Chicago Class B airspace project was published in the **Federal Register** (73 FR 44311). Subsequent to publication, the FAA has had to change the venue of meetings 1 and 3, being held on September 23, 2008, and September 25, 2008, respectively. The address for both of these meetings has changed to Signature Flight Center Hangar, 1061 S. Wolf Road, Wheeling, IL 60090. The second meeting time and place remains as previously published.

DATES: The informal airspace meetings will be held on Tuesday, September 23, 2008, from 2 p.m.–7 p.m., Wednesday, September 24, 2008, from 10 a.m.–2 p.m., and Thursday, September 25, 2008, from 2 p.m.–7 p.m.

ADDRESSES: (1) The meeting on Tuesday, September 23, 2008, will be held at the Signature Flight Center hangar, 1061 S. Wolf Road, Wheeling, IL 60090. (2) The meeting on Wednesday, September 24, 2008, will be held at DuPage Flight Center, Chicago DuPage Airport, 2700 International Drive, West Chicago, IL 60185. (3) The meeting on Thursday, September 25, 2008, will be held at the Signature Flight Center hanger, 1061 S. Wolf Road, Wheeling, IL 60090.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Support Specialist, Operations Support Group, Air Traffic Organization Central Service Area, 2601 Meacham Blvd, Fort Worth, TX 76137; Telephone (817) 222–5729.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2008, a notice of meetings was published in the **Federal Register** notifying the public of informal airspace

meetings for the Chicago Class B airspace project (73 FR 44311). Subsequent to publication, the FAA learned that 2 of the meetings would have to be held at a different location. This action changes the venue of meetings 1 and 3 to the new locations.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

Issued in Washington, DC, on August 27, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–20438 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1001; FRL–8709–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; NO_X and SO_2 Emissions Limitations for Fifteen Coal-Fired Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of proposed rule.

SUMMARY: EPA is withdrawing a portion of a proposed rule pertaining to a State of Maryland State Implementation Plan (SIP) revision that establishes tonnage caps for emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) from 15 coal-fired electric generating units. The proposed rule was published on January 10, 2008 (73 FR 1851). EPA is withdrawing a provision of the rule that Maryland requested we take no further action on. EPA has determined that the provision has no impact on the remainder of the rule, which is being finalized by separate document. This SIP action is being taken under the Clean Air Act (CAA).

DATES: The proposed rule for COMAR 26.11.27.03B(7)(a)(iii) is withdrawn as of September 4, 2008.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers at (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the proposed rule entitled, ''Approval and Promulgation of Air Quality Implementation Plans; Maryland; NO_X and SO_2 Emissions Limitations for Fifteen Coal-Fired Electric Generating Units,'' located in the Proposed Rules section of the January 10, 2008 **Federal Register** (73 FR 1851). On June 23, 2008, the Maryland Department of the Environment (MDE) submitted a letter withdrawing a portion of their July 12, 2007 submittal. The withdrawal only affects COMAR 26.11.27.03B(7)(a)(iii). This provision requires a unit that exceeds its ozone season NO_X emissions limit to surrender ozone season NO_X allowances equivalent to the number of tons of NO_X emitted in excess of the limit. The June 23, 2008 letter requested that EPA finalize its rulemaking with respect to the rest of the SIP Revision that is not withdrawn. EPA determined that withdrawal of COMAR 26.11.27.03B(7)(a)(iii) does not impact the other requirements in COMAR 26.11.27 and is severable. The other portions of the January 10, 2008 proposed rule are not affected, and are being finalized in a separate notice.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 20, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E8–19999 Filed 9–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0649–200750; FRL–8711–1]

Approval and Promulgation of Implementation Plans; Georgia; Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and disapprove portions of revisions to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia in three submittals dated October 31, 2006, March 5, 2007, and August 22, 2007. The proposed revisions modify Georgia's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting rules in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the ''2002 NSR Reform Rules''). The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements. EPA is proposing to approve Georgia's NSR rule revisions, with the exception of one NNSR provision. EPA is proposing to disapprove the State's incorporation of ''baseline emissions calculations'' into the Georgia NNSR provisions for the generation of Emissions Reductions' Credits to be used as offsets.

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0649, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: fortin.kelly@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* (Docket ID No. EPA–R04–OAR–2006–0649), Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Kelly Fortin, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2006–0649. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov.epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official business hours are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Georgia State Implementation Plan, contact Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9042; *e-mail address: harder.stacy@epa.gov.* For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562–9117; *e-mail address: fortin.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references to ''EPA,'' ''we,'' ''us,'' or ''our,'' are intended to mean the U.S. Environmental Protection Agency. The supplementary information is arranged as follows:

I. What Action Is EPA Proposing?
II. What Is the Background of EPA's Proposed Action?
III. What Is EPA's Analysis of Georgia's NSR Rule Revisions?
A. Prevention of Significant Deterioration
B. Nonattainment New Source Review
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing?

On October 31, 2006, March 5, 2007, and August 22, 2007, the State of Georgia, through the Georgia Environmental Protection Division (EPD), submitted revisions to the Georgia SIP. The SIP submittals consist of changes to the Georgia Rules for Air Quality Control, Chapter 391–3–1. Specifically, the October 31, 2006, proposed SIP revision includes changes to Rules 391–3–1–.02(7) ''Prevention of Significant Deterioration of Air Quality'' and 391–3–1–.03(8)(c) ''Permit Requirements'' related to nonattainment new source review. The March 5, 2007, submittal includes changes to Rules 391–3–1–.02(7) ''Prevention of Significant Deterioration of Air Quality,'' and 391–3–1–.03(13)(c) ''Emission Reduction Credits.'' Finally, the August 22, 2007, submittal includes changes to Rules 391–3–1–.02(7) ''Prevention of Significant Deterioration of Air Quality,'' and 391–3–1–.03(8) ''Permit Requirements.'' Georgia EPD submitted these revisions in response to EPA's December 31, 2002, changes to the federal NSR program. Consistent with section 110(k)(3) of the Clean Air Act (CAA), EPA is now proposing to partially approve NSR Reform related rules included in the above-summarized SIP revisions, with the exception of the revision to subparagraph 391–3–1–.03(13)(c), related to ''Emissions Reduction Credits,'' which EPA is proposing to disapprove. EPA is not acting on the non-NSR Reform portions of the submittals (Rules 391–3–1–.01(llll), 391–3–1–.02(2)(jjj), 391–3–1–.02(2)(ooo), 391–3–1–.02(6)(a)4, 391–3–1–.02(12), and 391–3–1–.03(6)(b)) in this action. Additionally, EPA is not acting on revisions to rules 391–3–1–.02(8)b, and 391–3–1–.03(9), because these rules are not part of the federally approved SIP.

II. What Is the Background of EPA's Proposed Action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' The purpose of this action is to propose to approve the SIP submittals from the State of Georgia that include State rule changes made as a result of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—''attainment'' areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—''unclassifiable'' areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—''nonattainment'' areas. Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full

public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for ''replacement unit'' and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see, 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr.*

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping and the term ''reasonable possibility'' found in 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit Court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action to establish that a ''reasonable possibility'' applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant (72 FR 72607). The ''reasonable possibility'' provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules with different but equivalent regulations.

On October 31, 2006, March 5, 2007, and August 22, 2007, Georgia EPD submitted revisions to EPA for the purpose of including the revised State NSR permitting rules in the SIP. EPA is now proposing to partially approve and disapprove certain portions of these submittals consistent with section 110(k)(3) of the CAA.

III. What Is EPA's Analysis of Georgia's NSR Rule Revisions?

Georgia currently has a SIP-approved NSR program for new and modified stationary sources. EPA is now proposing to approve revisions to Georgia's existing NSR program (with the exception of one NNSR provision). Georgia's SIP submittals consist of a compilation of amendments that became State-effective between April 19, 2006, and July 25, 2007. Copies of Georgia's revised NSR rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the **ADDRESSES** section above. Below is a discussion of the specific changes to Georgia's rules now proposed for inclusion into the SIP.

A. Prevention of Significant Deterioration

Georgia Rule for Air Quality Control chapter 391–3–1–.02, paragraph 7, ''Prevention of Significant Deterioration of Air Quality,'' contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under Part C of title I of the CAA (the PSD program). The PSD program applies to sources that are major stationary sources or undergoing major modifications in areas that are designated as attainment or unclassifiable with regard to any NAAQS. Georgia's PSD program was originally approved into the SIP by EPA on February 10, 1982 (47 FR 6017), and has been revised several times since then in order to remain consistent with federal rule changes.

The changes to Georgia's PSD rules, which EPA is now proposing to approve into the Georgia SIP, were made to update the existing Georgia rules to meet the requirements of the 2002 NSR Reform Rules. The SIP revisions including these rule updates address baseline actual emissions, actual-to-projected-actual applicability tests, and PALs. Georgia's PSD rules incorporate by reference (IBR) the federal PSD rules at 40 CFR 52.21, as amended by January 29, 2006. The version of 40 CFR 52.21 that is incorporated by reference into the Georgia rules is the version that existed as of the date of publication of the State's public notice, which was January 29, 2006. The proposed revisions explicitly exclude the PCP and clean unit portions of the 2002 NSR Reform Rules that were vacated as part of the D.C. Circuit Court's June 2005 decision.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping and EPA's December 21, 2007, clarifications of the term ''reasonable possibility'' (72 FR 72607), Georgia did not incorporate by reference or adopt the federal ''reasonable possibility'' provisions at 40 CFR 52.21(r)(6). In lieu of the federal provisions, Georgia adopted detailed recordkeeping and reporting requirements that apply to all modifications that use the actual-to-projected-actual methodology and are required to obtain a permit under Georgia's general permitting requirements (i.e. minor source construction program). Thus, the Georgia recordkeeping and reporting provisions are more comprehensive than the federal requirements. EPA's December 21, 2007, final action on the recordkeeping and reporting provisions of the federal rules explains state obligations with regard to the reasonable possibility related rule changes. *See*, 72 FR 72613–72614. Georgia has 3 years from the December 2007 rulemaking to submit revisions to incorporate the reasonable possibility provisions or to submit notice to EPA that their regulations fulfill these requirements.

In addition to incorporating the federal rule by reference, Georgia's rules include several additional provisions, such as the correction of reference errors in the federal rule, clarification of procedures for implementing the rules, and additional recordkeeping and reporting requirements. Each of these provisions is specifically addressed in Georgia's Technical Support Document. As part of the evaluation of the Georgia SIP submittals, EPA performed a line-

by-line comparison of Georgia's proposed revisions and the federal requirements. As a general matter, state agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules, with different but equivalent regulations. In addition, as part of its SIP submittal, Georgia EPD provided EPA with an ''equivalency demonstration'' comparing the differences in the State rule with the corresponding sections of the federal rules.

One notable difference from the federal rules is that the Georgia rules contain an optional provision for the permittee to omit ''malfunction'' emissions from the calculation of ''baseline actual emissions'' and ''projected actual emissions'' (Georgia Rules 391–3–1–.02(7)(a)2.(ii)(II)II). In the equivalency demonstration, EPD notes the difficulty of quantifying past malfunction emissions and estimating future malfunction emissions as part of the projected actual emissions. Georgia's rule specifies that if malfunction emissions are omitted from projected actual emissions, they must also be omitted from baseline actual emissions and vice-versa, so as to provide a comparable estimation of the emissions increases associated with a project. The intent behind this optional calculation methodology is that it may result in a more accurate estimate of emission increases. The federal rules allow for some flexibility, and EPA supports EPD's analysis that the Georgia rule is at least as stringent as the federal rule.

After evaluating the submittals and supporting documentation for changes to Georgia's PSD rules, EPA has determined that the proposed SIP revisions are consistent with the federal program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, set forth at 40 CFR 51.166.

B. Nonattainment New Source Review

Georgia's NNSR program applies to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by Part D of title I of the CAA. The provisions in the Georgia NNSR Rules 391–3–1–.03(8) were established to meet the current federal nonattainment rule, including the 2002 NSR Reform Rules, which are found at 40 CFR 51.160–165 and part 51, Appendix S.

The Georgia NNSR Rules incorporate applicable provisions from the state's PSD rules (391–3–1–.02(7)) and include additional provisions unique to nonattainment areas. Many of the changes that Georgia made to its PSD program to incorporate the federal NSR Reform Rules are also applicable to sources subject to NNSR permitting requirements. These include the above-mentioned requirements for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements. Likewise, the differences from the federal rule that were discussed in reference to the PSD program are also applicable to the Georgia nonattainment program.

As was discussed above, Georgia provided EPA with an equivalency demonstration to show that the State program is at least as stringent as the federal program. For Georgia's NNSR program, the differences from the federal rules for which the State demonstrated equivalency are the same as those identified in the State's PSD program. These deviations from the federal rule are acceptable, and may be retained in Georgia's NNSR program now being proposed for approval into the SIP.

The October 31, 2006, submittal also contains additional requirements related to offsets. These new provisions (subparagraphs 391–3–1–.03(8)(c) 12 (iv) through (vi)) require permittees that are required to obtain offsets for new and modified stationary sources to provide documentation to EPD that they have obtained sufficient offsets prior to start-up of the new or modified stationary source. EPA has determined that these proposed SIP revisions are consistent with the Federal program requirements for the preparation, adoption and submittal of implementation plans for the Review of New Sources and Modifications set forth at 40 CFR 51.160–165, and part 51, Appendix S.

The August 22, 2007, submittal also contains clarifications to specify, in Rule 391–3–1–.03(8)(e), the additional seven counties included in the Atlanta 8-hour ozone nonattainment area (as revised from the thirteen county 1-hour ozone nonattainment area). These counties are subject to nonattainment area permitting requirements, including the revised NSR reform provisions.

The March 5, 2007, submittal includes a revision to Georgia Rule 391–3–1–.03 subparagraph (13)(c), ''Quantification of Emission Reduction Credits.'' The proposed SIP revision changes the methodology for the calculation of emission reduction credits to incorporate the new Federal definition of ''baseline actual emissions.'' The State's purpose was to make the method for determining actual emissions, prior to a reduction, consistent with the calculation of baseline emissions reductions used elsewhere in the Federal and State NSR requirements. The emission reduction credits are certified under the Georgia rule to be used as offsets for NSR purposes. However, the federal requirements at 40 CFR 51.165 (a)(3)(i) indicate that the offset baseline shall be the ''actual emissions'' of the source from which offset credit is obtained. For additional discussion on this topic, see EPA's final action on the NSR Reform Rules (67 FR 80196), under the heading ''Am I able to Apply Today's Changes for Calculating the Baseline Actual Emissions to Other Major NSR Requirements?'' The Georgia SIP currently contains an approved calculation methodology for emission reduction credits, which is based upon the federal definition of ''actual emissions'' rather than ''baseline actual emissions.'' EPA is now proposing to disapprove the State's March 5, 2007, change to Georgia Rule 391–3–1–.03 subparagraph (13)(c) because it is not consistent with EPA's NSR Reform Rules. This provision is severable from the other portions of the Georgia submittals subject to this action. No further changes are necessary in response to EPA's proposed disapproval because Georgia's rules already contain a SIP-approved methodology for calculating emission reduction credits that is consistent with EPA's NSR Reform Rules.

IV. What Action Is EPA Proposing To Take?

EPA is proposing to partially approve and disapprove revisions to the Georgia SIP submitted on October 31, 2006, March 5, 2007, and August 22, 2007, that address changes to Georgia's PSD and NNSR programs. The disapproval involves subparagraph 391–3–1–.03(13)(c) of the March 5, 2007, submittal related to ''Emissions Reduction Credits.'' EPA's proposal to partially approve and disapprove the NSR permitting portions of the SIP submittals is consistent with section 110(k)(3) of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed

action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 25, 2008.

Russell L. Wright Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E8–20388 Filed 9–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R04–OAR–2008–0605; FRL–8710–9]

Outer Continental Shelf Air Regulations Consistency Update for Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule-consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (''CAA'' or ''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Florida will be the designated COA. The effect of approving the OCS requirements for the State of Florida is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations (CFR) and is listed in the appendix to the OCS air regulations. This proposed action is an annual update of the Florida's OCS Air Regulations. These rules include revisions to existing rules that already apply to OCS sources.

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0605, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lakeman.sean@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''(EPA–R04–OAR–2008–0605),'' Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''(EPA–R04–OAR–2008–0605).'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. EPA's Evaluation
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the Act requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12 of the OCS rule, ''consistency reviews will occur at least annually. In addition, in accordance with paragraphs (c) and (d) of this section, consistency reviews will occur upon receipt of an NOI (notice of intent) and when a State or local agency submits a rule to EPA to be considered for incorporation by reference in this part 55.'' This proposed action is an annual update of the Florida's OCS Air Regulations, which are incorporated by reference into 40 CFR part 55, Appendix A.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This process is distinct from the State Implementation Plan (SIP) process and incorporation of a rule into part 55 as part of the OCS consistency update process does not ensure such a rule would be appropriate for inclusion into the SIP. EPA's review of Florida's rules for OCS consistency update purposes is described below.

II. EPA's Evaluation

In updating 40 CFR part 55, Appendix A, EPA reviewed Florida's rules for inclusion into part 55 to ensure that they are (1) rationally related to the attainment or maintenance of federal or state ambient air quality standards and part C of title I of the Act; (2) not designed expressly to prevent exploration and development of the OCS; and (3) applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

EPA is soliciting public comments on the proposal to update 40 CFR part 55, Appendix A to include recent changes to Florida's onshore rules that affect OCS sources. Any comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to the EPA Region 4 Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

EPA is proposing an annual update of the Florida's OCS Air Regulations. These rules include revisions to existing rules that already apply to OCS sources. The rules that EPA is proposing to incorporate are applicable provisions of Chapter 62 of the Florida Administrative Code, listed in detail at the end of this document.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the CAA, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*,

[1] For further information see the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792).

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as it does with onshore sources. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in Florida, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (ICR) No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

These rules will not have a significant economic impact on a substantial number of small entities. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the CAA, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This document contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action would implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA without the exercise of any policy discretion by EPA. The OCS rules already apply in the COA, and EPA has no evidence to suggest that applying them in the OCS would result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. As required by section 328 of the CAA, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. These rules do not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comments on this proposed rule from state and local officials.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications.'' This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, these rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this proposed action. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements.

Although EPA lacks authority to modify today's regulatory decision on the basis of environmental justice considerations, EPA nevertheless explored this issue and found the following. This action, namely, updating the OCS rules to make them consistent with current COA requirements, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Environmental justice considerations may be appropriate to consider in the context of a specific OCS permit application.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Continental Shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 25, 2008.

Russell L. Wright Jr.,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, title 40 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended as follows:

a. In paragraph (e) introductory text by removing the words ''345 Courtland Street, NE., Atlanta, GA 30365'' and

adding in their place ''61 Forsyth Street, Atlanta, Georgia 30303''.

b. By revising paragraph (e)(6)(i)(A).

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(A) State of Florida Requirements Applicable to OCS Sources, January 2, 2008.

* * * * *

3. Appendix A to part 55 is amended by adding a new paragraph (a) and revising paragraph (1) under the heading ''Florida'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Florida

(a) State requirements.

(1) The following requirements are contained in *State of Florida Requirements Applicable to OCS Sources,* January 2, 2008:

Florida Administrative Code—Department of Environmental Protection. The following sections of Chapter 62:

Chapter 62–4 Permits

62–4.001 Scope of Part I (Effective 10/1/07)
62–4.020 Definitions (Effective 4/3/03)
62–4.021 Transferability of Definitions (Effective 8/31/88)
62–4.030 General Prohibition (Effective 8/31/88)
62–4.040 Exemptions (Effective 8/31/88)
62–4.050 Procedure to Obtain Permits and Other Authorizations; Applications (Effective 10/31/07)
62–4.055 Permit Processing (Effective 8/16/98)
62–4.060 Consultation (Effective 8/31/88)
62–4.070 Standards of Issuing or Denying Permits; Issuance; Denial (Effective 3/28/91)
62–4.080 Modification of Permit Conditions (Effective 3/19/90)
62–4.090 Renewals (Effective 3/16/08)
62–4.100 Suspension and Revocation (Effective 8/31/88)
62–4.110 Financial Responsibility (Effective 8/31/88)
62–4.120 Transfer of Permits (Effective 4/16/01)
62–4.130 Plant Operation—Problems (Effective 8/31/88)
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62–4.160 Permit Conditions (Effective 7/11/93)
62–4.200 Scope of Part II (Effective 10/1/07)
62–4.210 Construction Permits (Effective 8/31/88)
62–4.220 Operation Permit for New Sources (Effective 8/31/88)
62–4.249 Preservation of Rights (Effective 8/31/88)
62–4.510 Scope of Part III (Effective 10/1/07)
62–4.520 Definition (Effective 7/11/90)
62–4.530 Procedures (Effective 3/19/90)
62–4.540 General Conditions for All General Permits (Effective 8/31/08)

Chapter 62–204 Air Pollution Control—General Provisions

62–204.100 Purpose and Scope (Effective 3/13/96)
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62–204.340 Designation of Attainment, Nonattainment, and Maintenance Areas (Effective 3/13/96)
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62–204.400 Public Notice and Hearing Requirements for State Implementation Plan Revisions (Effective 11/30/94)
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62–210.300 Permits Required (Effective 3/16/08)
62–210.310 Air General Permits (Effective 5/9/07)
62–210.350 Public Notice and Comment (Effective 2/2/06)
62–210.360 Administrative Permit Corrections (Effective 3/16/08)
62–210.370 Emissions Computation and Reporting (Effective 7/3/08)
62–210.550 Stack Height Policy (Effective 11/23/94)
62–210.650 Circumvention (Effective 8/26/1981)
62–210.700 Excess Emissions (Effective 11/23/94)
62–210.900 Forms and Instructions (Effective 7/3/08)
62–210.920 Registration Forms for Air General Permits (Effective 5/9/07)

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62–212.300 General Preconstruction Review Requirements (Effective 2/2/06)
62–212.400 Prevention of Significant Deterioration (PSD) (Effective 7/16/07)
62–212.500 Preconstruction Review for Nonattainment Areas (Effective 2/2/06)
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62–212.710 Air Emissions Bubble (Effective 5/20/97)
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Chapter 62–213 Operation Permits for Major Sources of Air Pollution

62–213.100 Purpose and Scope (Effective 3/13/96)
62–213.202 Responsible Official (Effective 6/02/02)
62–213.205 Annual Emissions Fee (Effective 3/16/08)
62–213.300 Title V Air General Permits (Effective 4/14/03)
62–213.400 Permits and Permit Revisions Required (Effective 3/16/08)
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62–213.410 Changes Without Permit Revision (Effective 6/02/02)
62–213.412 Immediate Implementation Pending Revision Process (Effective 6/02/02)
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Chapter 62–214 Requirements for Sources Subject to the Federal Acid Rain Program

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62–296.401 Incinerators (Effective 1/10/07)
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62–296.405 Fossil Fuel Steam Generators With More Than 250 Million Btu Per Hour Heat Input (Effective 3/2/99)
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62–296.407 Portland Cement Plants (Effective 1/1/96)
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62–296.410 Carbonaceous Fuel Burning Equipment (Effective 1/1/96)
62–296.411 Sulfur Storage and Handling Facilities (Effective 1/1/96)
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62–296.413 Synthetic Organic Fiber Production (Effective 2/12/06)
62–296.414 Concrete Batching Plants (Effective 1/10/07)
62–296.415 Soil Thermal Treatment Facilities (Effective 3/13/96)
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62–296.417 Volume Reduction, Mercury Recovery and Mercury Reclamation (Effective 3/2/99)
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62–296.501 Can Coating (Effective 1/1/96)
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62–296.508 Petroleum Liquid Storage (Effective 1/1/96)
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62–296.511 Solvent Metal Cleaning (Effective 10/7/96)
62–296.512 Cutback Asphalt (Effective 1/1/96)
62–296.513 Surface Coating of Miscellaneous Metal Parts and Products (Effective 1/1/96)
62–296.514 Surface Coating of Flat Wood Paneling (Effective 1/1/96)
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62–296.570 Reasonably Available Control Technology (RACT)—Requirements for Major VOC and NO_X-Emitting Facilities (Effective 3/2/99)
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62–296.601 Lead Processing Operations in General (Effective 1/1/96)
62–296.602 Primary Lead-Acid Battery Manufacturing Operations (Effective 3/13/96)
62–296.603 Secondary Lead Smelting Operations (Effective 1/1/96)
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62–296.700 Reasonably Available Control Technology (RACT) Particulate Matter (Effective 1/1/96)
62–296.701 Portland Cement Plants (Effective 1/1/96)
62–296.702 Fossil Fuel Steam Generators (Effective 1/1/96)
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62–296.710 Smelt Dissolving Tanks (Effective 1/1/96)
62–296.711 Materials Handling, Sizing, Screening, Crushing and Grinding Operations (Effective 1/1/96)
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62–297.100 Purpose and Scope (Effective 3/13/96)
62–297.310 General Compliance Test Requirements (Effective 3/2/99)
62–297.320 Standards for Persons Engaged in Visible Emissions Observations (Effective 2/12/04)
62–297.401 Compliance Test Methods (Effective 3/2/99)
62–297.440 Supplementary Test Procedures (Effective 10/22/02)
62–297.450 EPA VOC Capture Efficiency Test Procedures (Effective 3/2/99)
62–297.520 EPA Continuous Monitor Performance Specifications (Effective 3/2/99)
62–297.620 Exceptions and Approval of Alternate Procedures and Requirements (Effective 11/23/94)

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[FR Doc. E8–20385 Filed 9–3–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 0808201128–81129–01]

RIN 0648–XJ97

Endangered and Threatened Wildlife; Notice of 90–Day Finding on a Petition to List the Three Ice Seal Species as a Threatened or Endangered Species

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

ACTION: Notice of 90–day petition finding; request for information.

SUMMARY: We (NMFS) announce a 90–day finding on a petition to list three ice seal species, [ringed (*Phoca hispida*), bearded (*Erignathus barbatus*), and spotted (*Phoca largha*)] as threatened or endangered under the Endangered Species Act (ESA). Although the petition identifies ringed seals as Pusa hispida, at this time we believe that the ringed seal is more properly identified as Phoca hispida. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action of listing the ice seals may be warranted. Therefore, we have initiated status reviews of the ice seals to determine if listing under the ESA is warranted. To ensure these status reviews are comprehensive, we are soliciting scientific and commercial information regarding all of these ice seal species.

DATES: Information and comments must be submitted to NMFS by November 3, 2008.

ADDRESSES: You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN), 0648–XJ97, by any of the following methods:

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

Mail: Assistant Regional Administrator, Protected Resource Division, NMFS, Alaska Regional Office, P.O. Box 21668, Juneau, Alaska 99802–1668,

Facsimile (fax): (907) 586–7012.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only interested persons may obtain a copy of the ice seal petition from the above address or online from the NMFS Alaska Region website: *http://www.fakr.noaa.gov/protectedresources/seals/ice.htm*.

FOR FURTHER INFORMATION CONTACT: James Wilder, NMFS Alaska Region, (907) 271 6620; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires, to the maximum extent practicable, that within 90 days of receipt of a petition to designate a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Joint ESA-implementing regulations between NMFS and U.S. Fish and Wildlife Service (50 CFR 424.14) define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. When it is found that substantial information is presented in the petition, we are required to promptly commence a review of the status of the species concerned. Within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether the petitioned action is warranted.

Under the ESA, a listing determination may address a species, subspecies, or a distinct population segment (DPS) of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA-USFWS policy clarifies the agencies' interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' (ESA section 3(16)) for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). The joint DPS policy establishes two criteria that must be met for a population or group of populations to be considered a DPS: (1) the population segment must be discrete in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the population segment must be significant to the remainder of the species (or subspecies) to which it belongs. A population segment may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management, conservation status, or if regulatory mechanisms exist that are significant in light of section 4(a)(1) (D) of the ESA. If a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species. A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, or ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively).

Background

On March 28, 2008, we issued a 90–day finding in response to a petition to list the ribbon seal as threatened or endangered (73 FR 16,617). We found that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. We therefore initiated a status review for the ribbon seal. Concurrent with that decision, we announced that we were also initiating a status review of three other ice seals (ringed, bearded, and spotted).

On May 28, 2008, we received a petition from the Center for Biological Diversity to list three species of ice seals (ringed, bearded, spotted) as threatened or endangered species under the ESA. The petitioner also requested that critical habitat be designated for ice seals concurrent with listing under the ESA. As described in this petition, the spotted seal is monotypic. The bearded seal contains two currently recognized subspecies, and the ringed seal contains five currently recognized subspecies: *Phoca hispida hispida, Phoca hispida botnica, Phoca hispida ochotensis, Phoca hispida ladogensis*, and *Phoca hispida saimensis*. Although the petition identifies ringed seals as *Pusa hispida*, we believe that the ringed seal is more properly identified as *Phoca hispida*. According to the petitioner, each of these subspecies meets the definition of a ''species'' eligible for listing under the ESA. In the event that we do not find that the entire species of ringed seal or bearded seal meets the requirements for listing, the petitioner requests that we evaluate whether each subspecies of bearded and ringed seals is eligible for listing. In the event that

we do not recognize the taxonomic validity of the bearded and ringed seal subspecies or the spotted seal species as described in this petition, the petitioner requests that we evaluate whether the spotted, ringed and bearded seals of the Bering, Chukchi, and Beaufort seas that are the subject of this petition constitute a DPS of the full species and/or represent a significant portion of the range of the full species and are therefore eligible for listing on such basis.

It is the petitioner's contention that ice seals face global extinction in the wild, and therefore, constitute a threatened or endangered species as defined under 16 U.S.C. 1532(6) and (20). The petition presents information on (1) ''global warming which is resulting in the rapid melt of the seals' sea-ice habitat;'' (2) ''high harvest levels allowed by the Russian Federation;'' (3) ''oil and gas exploration and development;'' (4) ''rising contaminant levels in the Arctic;'' and (5) ''bycatch mortality and competition for prey resources from commercial fisheries.'' The petition also presents information on the species' taxonomy, distribution, habitat requirements, reproduction, diet, natural mortality, and demographics, as well as a discussion of the applicability of the five factors listed under ESA section 4(a)(1). We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on our review of the petition and other available information, we find that the petition meets the aforementioned requirements of the regulations under 50 CFR 424.14(b)(2) and therefore determine that the petition presents substantial information indicating that the requested listing action may be warranted.

Status Review

As a result of this finding, we will continue our ongoing status review to determine whether listing ringed, bearded, and spotted seals under the ESA is warranted. We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we are opening a 60–day public comment period to solicit comments, suggestions, and information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of the ice seals throughout their range, including:

(1) Information on taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and trends, habitat trends, and effects of management on ice seals;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of ice seals, and their principal prey over the short- and long-term;

(3) Information on the effects of other potential threat factors, including oil and gas development, contaminants, hunting, poaching, and changes in the distribution and abundance of ice seals and their principal prey over the short-term and long-term;

(4) Information on management programs for ice seal conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit ice seals; and

(5) Information relevant to whether any populations of the ice seal species may qualify as distinct population segments.

We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 29, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E8–20544 Filed 9–3–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0808051052–81144–01]

RIN 0648–AW85

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Grouper and Tilefish Individual Fishing Quota Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to provide potential participants information concerning a referendum for an individual fishing quota (IFQ) program for the Gulf of Mexico (Gulf) commercial grouper and tilefish fisheries. This rule informs the potential participants of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. If the IFQ program, as developed by the Gulf of Mexico Fishery Management Council (Council), is approved through the referendum process, the Council may choose to submit the IFQ program to the Secretary of Commerce (Secretary) for review, approval, and implementation. The intended effect of this proposed rule is to implement the referendum consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before October 6, 2008.

ADDRESSES: You may submit comments on the proposed rule, identified by ''0648–AW85'', by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Fax: 727–824–5308; Attention: Susan Gerhart.
- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments. Attachments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic

zone (EEZ) of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

The Council first considered an IFQ program for the Gulf grouper fishery in 2004. At that time, the Council anticipated future action was needed to further control effort in the Gulf grouper fishery. At its October 2004 meeting, the Council requested NMFS publish a control date to discourage speculative participation in the grouper fishery for the purpose of developing a catch history. The Council chose October 15, 2004, as the control date. NMFS published the control date in the **Federal Register** on November 16, 2004 (69 FR 67106) and requested public comment.

The Council is currently developing Amendment 29 to the FMP, which includes a multi-species IFQ program as the preferred management approach to address overcapacity issues and to rationalize effort in the Gulf commercial grouper and tilefish fisheries.

Section 303A of the Magnuson-Stevens Act specifies general requirements for limited access privilege (LAP) programs implemented in U.S. marine fisheries. A LAP is defined as a Federal limited access permit that provides a person the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. This definition includes exclusive harvesting privileges allocated to participants under IFQ programs.

Section 303A(c)(6)(D) of the Magnuson-Stevens Act outlines specific requirements for IFQ program proposals developed by the Council. The Magnuson-Stevens Act requires such program proposals, as ultimately developed, be approved through referenda before they may be submitted for review and implementation by the Secretary. The Magnuson-Stevens Act also mandates the Secretary publish referendum guidelines to determine procedures for initiating, conducting, and deciding IFQ program referenda, as well as voting eligibility requirements. These procedures and guidelines are intended to ensure referenda conducted on IFQ program proposals are fair and equitable and will provide the Council the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis, yet within the constraints of the Magnuson-Stevens Act and other applicable law. NMFS published proposed guidelines in the **Federal Register** on April 23, 2008 (73 FR 21893) and requested public comment.

Purpose of the Proposed Rule and the Referendum

NMFS, in accordance with the provisions of section 303A(c)(6)(D) of the Magnuson-Stevens Act, will conduct a referendum to determine whether the plan amendment for an IFQ program for the Gulf commercial grouper and tilefish fisheries, as developed by the Council, should be submitted to the Secretary for review, and possible approval and implementation. The determination will be based on a majority vote of eligible voters. The primary purpose of this proposed rule is to notify potential participants in the referendum, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. The procedures and eligibility criteria used for the purposes of conducting the referendum are independent of the procedures and eligibility requirements in the proposed IFQ program for the Gulf commercial grouper and tilefish fisheries contained in Amendment 29 to the FMP. The proposed IFQ program is being developed by the Council through the normal plan amendment and rulemaking processes and involves extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule.

Referendum Process

How Would the Referendum Be Initiated?

According to the guidelines, a Council must have held public hearings on an IFQ program proposal, considered public comment on the proposal, and selected preferred alternatives for the proposed IFQ program, before submitting an initiation request letter to NMFS. The initiation request letter would allow NMFS to initiate the referendum process. As the above requirements have been fulfilled, the Council submitted an initiation request letter to NMFS on August 18, 2008.

The referendum initiation request letter must include recommended eligibility criteria for voting in the referendum, rationale for the recommendation, any alternatives to the recommendation, and supporting analyses for the recommendation. For a fishery managed with multi-species permits, the initiation request letter must also include recommended criteria for defining those permit holders who have substantially fished the species to be included in the referendum process.

If the referendum fails to approve the proposed IFQ program, any request from the Council for a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

Who Would Be Eligible to Vote in the Referendum?

Section 303A(c)(6)(D) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons who may vote in the referendum. For referenda conducted in New England fisheries, section 303A(c)(6)(D)(v) of the Magnuson-Stevens Act includes using income-dependent criteria when determining voter eligibility, i.e. crew members who derive a significant percentage of their total income from the fishery under the proposed IFQ program would be eligible to vote in the referendum. However, for Gulf fisheries managed with multi-species permits, such as the Gulf commercial grouper and tilefish fisheries, the Magnuson-Stevens Act states that those participants who have substantially fished the species considered for the IFQ program, would be eligible to vote in the referendum. The Council and NMFS interpret ''substantially fished'' to represent substantial contribution to the overall fishery production in total harvest. Therefore, the Council has established voter eligibility criteria in terms of annual grouper and tilefish landings thresholds. The decision to identify participants in terms of average annual harvest does not consider dependency on the fishery. A fishery participant may not meet the average annual grouper and tilefish landings threshold, but still be dependent on the fishery as a source of income.

In the Council's referendum initiation request letter, the definition of ''substantially fished'' states, ''Only commercial reef fish permit holders, with active or renewable permits (within one year of the grace period immediately following expiration), who have combined average annual grouper and tilefish landings from logbooks during the qualifying years of at least 8,000 pounds (per permit) be considered as having substantially fished.'' The qualifying years selected by the Council are 1999 through 2004, with an allowance for dropping one year. Therefore, NMFS will use landings data from logbooks submitted to and received by the Science and Research

Director, Southeast Fisheries Science Center by December 31, 2006, for the years 1999 through 2004, with the allowance for dropping one year, as the sole basis to determine those permit holders that meet the Council's eligibility criterion and will be eligible to vote in the referendum.

Would Votes Be Weighted?

The Council has proposed assigning one vote for each permit associated with qualifying landings from the years 1999 through 2004, with no additional vote weighting based on catch history.

How Would Votes Be Conducted?

On or about December 1, 2008, NMFS would mail eligible voters a ballot for each permit associated with qualifying landings from the years 1999 through 2004. NMFS would mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for eligible permit holders. The completed ballot must be mailed to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Ave South, St. Petersburg, FL 33701. A referendum ballot must be received at that address by 4:30 p.m., eastern time, no later than 30 days after the postmark date on the envelope containing the ballots provided by NMFS; ballots received after that deadline would not be considered in determining the outcome of the referendum. Although it would not be required, voters may want to consider submitting their ballots by registered mail.

How Would the Outcome of the Referendum Be Determined?

Vote counting would be conducted by NMFS. Approval or disapproval of the referendum would be determined by a majority (i.e., a number greater than half of a total) of the votes cast. NMFS would prepare a media release announcing the results of the referendum and would distribute the release to all Gulf reef fish permitees, including dealers, and other interested parties within 60 days of the deadline for receiving the ballots from eligible voters. The results would also be posted on NMFS' Southeast Regional Office's website at *http://sero.nmfs.noaa.gov*.

What Will Happen After the Referendum is Conducted?

NMFS would present the results of the referendum at the April 13–17, 2009, Council meeting. If the referendum fails, the Council cannot proceed with submission of Amendment 29 and regulations to implement an IFQ program for the Gulf commercial grouper and tilefish fisheries. If the referendum is approved, the Council would be authorized, if it so decides, to submit Amendment 29 and regulations to NMFS for review and possible approval and implementation of an IFQ program for the Gulf commercial grouper and tilefish fisheries. The proposed IFQ program was developed through the normal Council process that involved extensive opportunities for industry and public review and input at various Council meetings. The public will have additional opportunities to comment during public comment periods on the plan amendment and the proposed regulations.

Will the Referendum Be Conducted in a Fair and Equitable Manner?

The Magnuson-Stevens Act requires the Secretary to conduct referenda for potential IFQ programs in a fair and equitable manner. NMFS' referendum guidelines outline criteria that NMFS must consider when reviewing the Council's referendum initiation request letter and supporting analyses to ensure the referenda will be conducted in a fair and equitable manner and are consistent with the national standards and other provisions of the Magnuson-Stevens Act, and other applicable law. NMFS has reviewed these documents from the Council and has concluded that the proposed referendum criteria are consistent with the guidelines. NMFS has preliminarily concluded that:

1. The Council's referendum criteria are rationally connected to and further the objectives of the proposed IFQ program. The Council's definition of ''substantially fished'' includes those permit holders with both past and present participation in the grouper and tilefish fisheries and allows those who account for the majority of grouper and tilefish landings to vote in the referendum. The definition includes use of catch histories from a qualifying time period that would also be used for initial apportionment of IFQ shares in the proposed IFQ program.

2. Referendum voting eligibility requirements are designed to prevent any one person or single entity from obtaining an excessive share of the voting privileges. The Council has proposed assigning one vote for each permit associated with qualifying landings from the years 1999 through 2004, instead of weighting the votes.

3. The voter eligibility criteria enable validating a participant's eligibility. Landings data from logbooks submitted to NMFS and NMFS permit history records will be used to validate participants' eligibility to vote in the referendum.

4. The time period and format proposed to conduct the referendum is consistent with the referendum guidelines and provides for a fair and equitable process. NMFS would mail referendum ballots to eligible voters as soon as practicable after the final referendum rule is published. Eligible voters would have to submit their ballots to be received by NMFS no later than 30 days from the postmark date on the envelope containing the ballots provided by NMFS. NMFS would tally the votes and post the results within 60 days of receiving the ballots.

Summary Information About the Potential IFQ Program

The current management of Gulf commercial grouper and tilefish fisheries is based on a traditional command and control approach. This management approach has resulted in overcapitalization of the commercial grouper and tilefish fisheries which has caused increased derby fishing conditions and in some years has led to closures of these fisheries prior to the end of the fishing year. The purpose of implementing an IFQ program for the commercial grouper and tilefish fisheries is to rationalize effort and reduce overcapacity in the fleet. Amendment 29 to the FMP includes several management programs that would be capable of achieving these management goals, an IFQ program being the Council's preferred approach. The actions included in Amendment 29 include: Initial eligibility in the IFQ program, initial apportionment of IFQ shares, IFQ share categories, multi-use allocation and trip allowances, transfer eligibility requirements, IFQ share ownership caps, IFQ allocation ownership caps, adjustment to the commercial quota, establishment and structure of an appeals process, a ''use it or lose it'' policy for IFQ shares, a cost recovery plan, and approval of landing sites. The Council has selected its preferred alternatives for each of these actions through the normal Council process. If the referendum is approved, the Council, if it so decides, may continue with the submission of Amendment 29 for review, approval, and implementation.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this

rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would implement a referendum on a potential IFQ program for the Gulf commercial grouper and tilefish fisheries, consistent with the requirements of the Magnuson-Stevens Act. The primary purpose of this proposed rule is to notify potential participants in the referendum, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum.

Participation in the Gulf commercial grouper and tilefish fisheries requires a Federal reef fish permit. There are currently 1,080 Federal reef fish permits that are either active (non-expired) or expired but renewable. Within this fleet, over the 2005–2006 fishing years, 895 vessels recorded landings of reef fish species, valued at a total of approximately $46.3 million (2007 dollars), or an average of approximately $52,000 per vessel. Some fleet activity occurs in the reef fish fishery, such that some entities own multiple permits and vessels. The extent of such activity is unknown, however, and, for the purpose of this analysis, all permits or vessels are assumed to be independent entities.

One class of small business entities would be directly affected by the rule: Commercial fishing operations. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The proposed referendum qualifying criteria would allow 333 of the 1,080 entities with Federal reef fish permits to participate in the referendum. Economic profiles of these entities are not available. However, assuming all the reef fish revenues discussed above were attributable to just the 333 qualifiers, which is known with certainty to not be true, the average annual revenue from reef fish sales, based on 2005–2006 harvest data, would be less than $140,000 per qualifier. Thus, the average annual revenue per qualifying entity is determined to be less than $140,000 and all commercial entities that would qualify for participation in the referendum are determined, for the purpose of this proposed rule, to be small entities.

The proposed rule defines the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. There are no implementing regulations associated with the proposed rule. Because there are no implementing regulations, there would be no direct effects on current fishery participation, effort, harvests, or other use of the grouper and tilefish resources. All current entities can continue to participate in the fishery in the manner in which they currently operate. Therefore, all current harvests, costs, and profits would remain unchanged. Any effects, adverse or otherwise, on small entities that participate in the fishery would only occur if in the future an IFQ program is implemented as a result of subsequent rulemaking. The final expected impacts of the IFQ program are unknown since final approval of the specific program has not occurred. Estimates of variable costs savings attributable to the implementation of an IFQ system in the Gulf commercial grouper and tilefish fisheries are between $2.1 and $2.9 million per year, as well as unquantified reductions in fixed costs and increased ex-vessel prices. Final estimates of expected impacts will be identified should an IFQ program be proposed. Since the proposed rule would not directly affect fishery participation or harvest in any way, the rule would not reduce business profit for any fishery participants or related businesses. Profits are, therefore, not expected to be significantly reduced by the proposed rule. On this basis, it is determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not required or prepared. Copies of the RIR and RFAA are available (see **ADDRESSES**).

IFQ program referenda conducted under section 303A(c)(6)(D)(iv) of the Magnuson-Stevens Act are exempt from the Paperwork Reduction Act.

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

Dated: August 29, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E8–20543 Filed 9–3–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 172

Thursday, September 4, 2008

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.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

Time: Tuesday, September 30, 2008, 9 a.m. to 4 p.m.

Place: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

Date: Tuesday, September 30, 2008.

Status:

1. Open session, Tuesday, September 30, 2008, 9 a.m. to 10:30 a.m.; and

2. Closed session, Tuesday, September 30, 2008, 11 a.m. to 4 p.m.

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Doris Martin, General Counsel, at (202) 673–3916 or Michele M. Rivard at *mrivard@usadf.gov* of your request to attend by 5 p.m. on Tuesday, September 23, 2008.

Lloyd O. Pierson,

President.

[FR Doc. E8–20446 Filed 9–3–08; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

White Tanks No. 4 Flood Retarding Structure Rehabilitation Plan, Maricopa County, AZ

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service (NRCS) Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the White Tanks No. 4 Flood Retarding Structure (FRS) Rehabilitation Plan, Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: David McKay, State Conservationist, USDA–NRCS, 230 North First Avenue, Suite 509, Phoenix, Arizona 85003, telephone (602) 280–8801.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. Based on evidence presented, David McKay, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project proposes to rehabilitate the White Tanks No. 4 FRS to meet NRCS and State of Arizona safety and performance standards.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. Copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Don Paulus, Assistant State Conservationist for Programs, at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: August 28, 2008.

David McKay,

State Conservationist.

[FR Doc. E8–20533 Filed 9–3–08; 8:45 am]

BILLING CODE 3410–16–P

BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM

[Docket No. FR–5249–N–01]

Organization and Functions of the Board of Directors

AGENCY: Board of Directors of the HOPE for Homeowners Program.

ACTION: Notice.

SUMMARY: The Board of Directors (Board) of the HOPE for Homeowners Program (Program) was established by statute to oversee the Program. Through this notice, the Board is publishing the bylaws that it has adopted regarding the Board's organization, staffing, and operational procedures.

DATES: *Effective Date:* August 15, 2008.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title IV of Division A of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) (Act) amended Title II of the National Housing Act (NHA) to add a new section 257. This section established the Program as a temporary Federal Housing Administration (FHA) program that offers voluntary participation on the part of homeowners and existing loan holders (or servicers acting on their behalf) to insure refinanced loans for distressed borrowers to support long-term sustainable homeownership, including among other things, allowing homeowners to avoid foreclosure. Under the Program, a qualified mortgage borrower may refinance his or her existing mortgage into a new mortgage loan insured by the FHA, subject to conditions and restrictions specified in the Act. The Program authorizes FHA to insure such eligible mortgages commencing no earlier than October 1, 2008, and the authority to insure expires September 30, 2011.

Section 257(t) of the NHA establishes a Board of Directors to oversee the Program. The Board is composed of the Secretary of Housing and Urban Development, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or the respective designee of each. Section 257(t) of the NHA requires the Board to, among other things, establish requirements and standards for the Program and prescribe regulations and guidelines as may be necessary or appropriate to implement such requirements and standards.

Section 257(t) of the NHA also provides that the Board may ''prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Board.'' Consistent with this provision, the Board has adopted bylaws regarding its organization, staffing, and operational procedures in order to facilitate the prompt implementation of the Program, and these bylaws are set forth in this notice.

The bylaws provide for appointment by the Board of an official staff consisting of an Executive Director, Counselor, Financial Officer, and Secretary, with their initial respective responsibilities set out in the organizational rules. The bylaws provide that the Board may request that any Federal Government employee be detailed to the Board without reimbursement by the Board and may arrange for the procurement of the services of outside experts and consultants as the Board considers necessary to assist it in fulfilling its duties with respect to the Program, as authorized by the Act. The Board may delegate authority to take certain actions to its official staff, officials or staff of the agencies represented on the Board, or other Federal Government employees detailed or providing services to the Board subject to such terms and conditions as the Board deems appropriate.

The bylaws further provide that records of the Board will be maintained at the main office of the Department of Housing and Urban Development, which also will serve as the principal place of business of the Board. The Board is publishing these bylaws in the **Federal Register** pursuant to 5 U.S.C. 552(a)(1)(A) and (B).

Section 1 Purpose and Scope

These bylaws describe the organizational structure of the Board of Directors (Board) established to oversee the program authorized by section 257 of the National Housing Act (Act) (12 U.S.C. 1715z–22) (the Program) and the general operational procedures by which the Board will carry out its oversight functions.

Section 2 Composition of the Board; Chairperson

a. *Composition.* The Board consists of—

1. The Secretary of Housing and Urban Development, or the Secretary's designee;

2. The Secretary of the Treasury, or the Secretary's designee;

3. The Chairman of the Board of Governors of the Federal Reserve System, or the Chairman's designee; and

4. The Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or the Chairperson's designee.

b. *Chairperson of the Board.* The Secretary of Housing and Urban Development, or the Secretary's designee, shall serve as the Chairperson of the Board.

Section 3 Offices

The principal offices of the Board are at 451 7th Street, SW., Washington, DC 20410. The official records of the Board will be compiled and stored at this location.

Section 4 Meetings and Actions of the Board

a. *Place and frequency.* The Board meets on the call of the Chairperson of the Board in order to consider matters requiring review or action by the Board. The time and place for any such meeting shall be determined by the members of the Board.

b. *Quorum and voting.* A majority of the members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by a majority vote of the voting members. Votes on determinations of the Board shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

c. *Agenda of meetings.* To the extent practicable, an agenda for each meeting shall be distributed to members of the Board in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

d. *Minutes.* The Secretary of the Board shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

e. *Use of conference call communications equipment.* Any member may participate in a meeting of the Board through the use of conference call, telephone, or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

f. *Actions between meetings.* When, in the judgment of the Chairperson, circumstances make it desirable for the Board to consider action other than at a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary of the Board and the voting members may communicate their votes to the Chairperson in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph (f) has the same effect as an action taken at a meeting.

Section 5 Staff

a. *Executive Director.* The Executive Director of the Board advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

b. *Counselor.* The Counselor to the Board provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board or Executive Director may require.

c. *Financial Officer.* The Financial Officer of the Board provides financial advice relating to the responsibilities of the Board and performs such other duties as the Board or Executive Director may require.

d. *Secretary.* The Secretary of the Board sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board, and performs such other duties as the Executive Director may require.

e. *Additional staff.* The Board may request that any Federal Government employee be detailed or provide service to the Board without reimbursement by

the Board and without interruption or loss of civil service status or privilege.

f. *Committees.* The Board may establish committees composed of members of the Board, staff of the Board, employees of any other agency of the U.S. Government who are detailed or providing services to the Board, or any combination of the foregoing.

g. *Individuals holding multiple staff positions.* An individual may hold more than one staff or committee position.

Section 6 Delegations

a. *General.* Subject to such terms and conditions as the Board deems appropriate, the Board may delegate authority to take certain actions not required by the Act to be taken by the Board to—

1. An individual member of the Board;

2. The Executive Director, the Counselor, Financial Officer, or the Secretary of the Board;

3. Any officer or employee of the Department of Housing and Urban Development, the Department of Treasury, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or any other U.S. Government employee detailed or providing services to the Board; or

4. A committee composed of any of the foregoing persons.

b. *Records.* All delegations shall be made pursuant to resolutions of the Board and recorded in writing. Any action taken pursuant to delegated authority has the effect of an action taken by the Board.

Section 7 Experts and Consultants

The Board may arrange for the procurement of the services of experts or consultants as it determines appropriate to assist the Board in fulfilling its oversight duties and responsibilities.

Section 8 Review and Approval of Administrative Expenses

The Board may establish such processes for the review, approval, and monitoring of administrative expenses and other costs of the Program as the Board determines necessary and appropriate.

Section 9 Compensation

Members of the Board shall serve without compensation, but shall be reimbursed by their respective agencies for travel expenses, including per diem in lieu of subsistence equivalent to those set forth in subchapter I of 5 U.S.C. chapter 57.

Section 10 Amendments

These rules of organization and procedures of the Board may be adopted or amended, or new rules of organization or procedure may be adopted, only by majority vote of the Board.

Dated at Washington, DC, this 15th day of August, 2008.

By order of the Board of Directors of the HOPE for Homeowners Program.

Emmanuel Yeow,

Secretary of the Board.

[FR Doc. E8–20298 Filed 9–3–08; 8:45 am]

BILLING CODE 4210–67–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Tuesday, September 2, 2008, 3 p.m.–4 p.m.

PLACE: Cohen Building, Room 3360, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in a special session to review and discuss budgetary issues relating to U.S. Government-funded non-military international broadcasting. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Timi Nickerson Kenealy at (202) 203–4545.

September 2, 2008.

Timi Nickerson Kenealy,

Acting Legal Counsel.

[FR Doc. E8–20619 Filed 9–2–08; 4:15 pm]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a public hearing of the South Carolina Advisory Committee to the Commission (South Carolina Committee) will convene at 1 p.m. and adjourn at 4:30 p.m. on Monday, September 22, 2008, at Humphries Hall, 1301 Columbia College Drive, Columbia College, Columbia, South Carolina 29203. The purpose of the public hearing is for the South Carolina Committee to receive testimony from school officials and government education agency officials on the provision of supplemental educational services as well as parental notification of such services as required under the No Child Left Behind Act of 2001.

Members of the public are entitled to make written comments to the South Carolina Committee. Written comments should be sent to the Southern Regional Office of the Commission and received by Tuesday, September 30, 2008. The mailing address is: Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to e-mail their written comments may do so to *dhorne@usccr.gov.* Persons who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000, or by e-mail at *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from these meetings may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern Regional Office at the above e-mail or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 28, 2008

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–20426 Filed 9–3–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 4, 2008.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing an antidumping duty order on certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC''). On August 28, 2008, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry and its negative determination of critical circumstances. *See* Certain Off-The-Road Tires from China , USITC Pub. 4031, Inv. Nos. 701–TA–448 and 731–TA–1117 (Final) (August 2008).

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6412 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On July 15, 2008, the Department published its final determination of sales at less than fair value (''LTFV'') in the antidumping investigation of certain new pneumatic OTR tires from the PRC. *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008) *(''Final Determination'')*.

On August, 28, 2008, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (''the Act''), that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from the PRC and by reason of subsidized imports from the PRC. The ITC also determined that critical circumstances do not exist for the PRC.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[1] combine harvesters,[2] agricultural high clearance sprayers,[3] industrial tractors,[4] log-skidders,[5] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[6] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[7] front end loaders,[8] dozers,[9] lift trucks, straddle carriers,[10] graders,[11] mobile cranes,[12] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[13] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[14] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our

[1] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[2] Combine harvesters are used to harvest crops such as corn or wheat.

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[6] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[7] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[8] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

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[11] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[12] *I.e.*, ''on-site'' mobile cranes designed for off-highway use.

[13] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, etc.

[14] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P—Identifies a tire intended primarily for service on passenger cars;
- LT—Identifies a tire intended primarily for service on light trucks; and,
- ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″;
- MH—Identifies tires for Mobile Homes;
- HC—Identifies a heavy duty tire designated for use on ''HC'' 15″ tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Amendment to the Final Determination

In accordance with sections 735(d) and 771(i)(1) of the Act, on July 15, 2008, the Department published its notice of final determination of sales at LTFV in the investigation of certain new pneumatic OTR tires from the PRC. *See Final Determination,* 73 FR 40485, and corresponding ''Issues and Decision Memorandum'' (July 7, 2008). On July 16, 2008, Titan Tire Corporation, a subsidiary of Titan International, Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (collectively, ''Petitioners''), Bridgestone Holding, Inc. and its subsidiary, Bridgestone Firestone North American Tire, LLC (''Bridgestone''), a domestic producer, as well as mandatory respondents Hebei Starbright Co., Ltd. (''Starbright''), Tianjin United Rubber International Co., Ltd. (''TUTRIC''), and Xuzhou Xugong Tyres Co., Ltd. (''Xugong'') submitted timely ministerial error allegations with respect to the *Final Determination.* On July 21, 2008, Petitioners, Bridgestone and Xugong submitted rebuttal comments to Petitioners', Xugong's, and Bridgestone's ministerial error submissions, respectively. In accordance with 19 CFR 351.224(b), on August 15, 2008, the Department issued its Ministerial Error Correction Memo[15] addressing the parties' ministerial error allegations. As discussed in the memorandum, the Department accepted some of the allegations as ministerial errors and stated that it would make those corrections by amending the *Final Determination.* The Department also disclosed the details of its calculation of the amended final dumping margins to all parties in this investigation (i.e., Petitioners, Bridgestone, and mandatory respondents) on August 15, 2008. On August 21, 2008, Bridgestone submitted a ministerial error allegation with respect to the Ministerial Error Correction Memo.

After analyzing all interested party comments and rebuttals, we have determined, in accordance with 19 CFR 351.224(e), that we made ministerial errors in our calculations performed for the final determination. As a result, the dumping margins have been amended as follows:

	Original final margin (percent)	Amended final margin (percent)
Starbright	19.15	29.93
TUTRIC	8.09	8.44
Guizhou Tyre	4.08	5.25
Xugong	0.00	*0.00

* No change.

For detailed discussions of the ministerial error allegations, as well as the Department's analysis, see the memoranda regarding ''Final Determination of Antidumping Investigation on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Allegations of Ministerial Errors'' (August 14, 2008) and ''Amended Final Determination of Antidumping Investigation on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Allegation of Ministerial Error'' (August 28, 2008), and the company-specific amended final analysis memoranda: Analysis Memorandum for the Amended Final Determination: Guizhou Tyre Co. Ltd. and its affiliates (collectively, ''Guizhou Tyre''); Analysis Memorandum for the Amended Final Determination: Hebei Starbright Tire Co. Ltd.; Analysis Memorandum for the Amended Final Determination: Tianjin United Tire & Rubber International Co. Ltd.; and, Analysis Memorandum for the Final Determination: Xuzhou Xugong Tyres Co., Ltd. Additionally, in the *Final Determination,* we determined that multiple companies qualified for separate-rate status. The margin we calculated in the final determination for these companies was 9.48 percent. Because the final margins of three of the mandatory respondents, Starbright, TUTRIC and Guizhou Tyre, have changed since the *Final Determination* as a result of ministerial errors corrections, we have recalculated the margin for separate-rate respondents and the amended margin is 12.91 percent. See the Memorandum to The File regarding ''Weighted-Average Margin Calculation for Separate Rate Companies in the Amended Final Determination'' (August 28, 2008).

Therefore, in accordance with 19 CFR 351.224 (e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of certain new pneumatic OTR tires from the PRC. The revised dumping margins are listed in the chart below.

Antidumping Duty Orders

On August 28, 2008, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the

[15] *See* Memorandum Re: Final Determination of Antidumping Duty Investigation on Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Allegations of Ministerial Errors, dated August 14, 2008 (''Ministerial Error Correction Memo'').

United States producing certain new pneumatic OTR tires is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of subject merchandise from the PRC.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of certain new pneumatic OTR tires from the PRC. These antidumping duties will be assessed on all unliquidated entries of certain new pneumatic OTR tires entered, or withdrawn from warehouse, for consumption on or after February 20, 2008, the date on which the Department published its notice of preliminary determination in the **Federal Register**.[16]

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of certain new pneumatic OTR tires, we extended the four-month period to no more than six months.[17] In this investigation, the six-month period beginning on the date of the publication of the *Preliminary Determination* (*i.e.*, February 20, 2008) ends on August 18, 2008. Furthermore, section 737 of the Act provides that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of OTR Tires from the PRC entered, or withdrawn from warehouse, for consumption after August 18, 2008, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on or after the date of publication of the ITC's final injury determination in the **Federal Register**.

With regard to the ITC's negative critical circumstances determination, we will instruct CBP to lift suspension, release any bond or other security, and refund any cash deposit made to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after November 22, 2007, but before February 20, 2008 (*i.e.*, 90 days prior to the date of publication of the preliminary determination in the **Federal Register**).

Effective on the date of the publication of the ITC's final affirmative injury determination in the **Federal Register**, CBP, pursuant to section 735(c)(3) of the Act, will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as listed below.

OTR TIRES FROM THE PRC

Exporter	Producer	Weighted-average margin (percent)
Guizhou Tyre Co., Ltd.	Guizhou Advance Rubber	5.25
Guizhou Tyre Co., Ltd.	Guizhou Tyre Co., Ltd.	5.25
Hebei Starbright Co., Ltd./GPX International Tire Corporation, Ltd..	Hebei Starbright Co., Ltd.	29.93
Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC")	Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC")	8.44
Xuzhou Xugong Tyres Co., Ltd.	Xuzhou Xugong Tyres Co., Ltd. =	0.00
Aeolus Tyre Co., Ltd.	Aeolus Tyre Co., Ltd.	12.91
Double Coin Holdings Ltd.	Double Coin Holdings Ltd.	12.91
Double Coin Holdings Ltd.	Double Coin Group Rugao Tyre Co., Ltd.	12.91
Double Coin Holdings Ltd.	Double Coin Group Shanghai Donghai Tyre Co., Ltd.	12.91
Double Happiness Tyre Industries Corp., Ltd.	Double Happiness Tyre Industries Corp., Ltd.	12.91
Jiangsu Feichi Co., Ltd.	Jiangsu Feichi Co., Ltd.	12.91
Kenda Rubber (China) Co., Ltd./Kenda Global Holding Co., Ltd (Cayman Islands).	Kenda Rubber (China) Co., Ltd.	12.91
KS Holding Limited	Oriental Tyre Technology Ltd.	12.91
KS Holding Limited	Shandong Taishan Tyre Co., Ltd.	12.91
KS Holding Limited	Xu Zhou Xugong Tyres Co., Ltd.	12.91
Laizhou Xiongying Rubber Industry Co., Ltd.	Laizhou Xiongying Rubber Industry Co., Ltd.	12.91
Oriental Tyre Technology Limited	Midland Off the Road Tire Co., Ltd.	12.91
Oriental Tyre Technology Limited	Midland Specialty Tire Co., Ltd.	12.91
Oriental Tyre Technology Limited	Xuzhou Hanbang Tyres Co., Ltd.	12.91
Qingdao Aonuo Tyre Co., Ltd.	Qingdao Aonuo Tyre Co., Ltd.	12.91
Qingdao Etyre International Trade Co., Ltd.	Shandong Xingda Tyre Co. Ltd.	12.91
Qingdao Etyre International Trade Co., Ltd.	Shandong Xingyuan International Trade Co. Ltd.	12.91
Qingdao Etyre International Trade Co., Ltd.	Shandong Xingyuan Rubber Co. Ltd.	12.91
Qingdao Free Trade Zone Full-World International Trading Co., Ltd..	Qingdao Eastern Industrial Group Co., Ltd.	12.91
Qingdao Free Trade Zone Full-World International Trading Co., Ltd..	Qingdao Qihang Tyre Co., Ltd.	12.91
Qingdao Free Trade Zone Full-World International Trading Co., Ltd..	Qingdao Shuanghe Tyre Co., Ltd.	12.91

[16] *See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 9278 (February 20, 2008) ("Preliminary Determination").*

[17] *See Id* at 9278.

OTR TIRES FROM THE PRC—Continued

Exporter	Producer	Weighted-average margin (percent)
Qingdao Free Trade Zone Full-World International Trading Co., Ltd..	Qingdao Yellowsea Tyre Factory	12.91
Qingdao Free Trade Zone Full-World International Trading Co., Ltd..	Shandong Zhentai Tyre Co., Ltd.	12.91
Qingdao Hengda Tyres Co., Ltd.	Qingdao Hengda Tyres Co., Ltd.	12.91
Qingdao Milestone Tyre Co., Ltd.	Qingdao Shuanghe Tyre Co., Ltd.	12.91
Qingdao Milestone Tyre Co., Ltd.	Shandong Zhentai Tyre Co., Ltd.	12.91
Qingdao Milestone Tyre Co., Ltd.	Shifeng Double-Star Tire Co., Ltd.	12.91
Qingdao Milestone Tyre Co., Ltd.	Weifang Longtai Tyre Co., Ltd.	12.91
Qingdao Qihang Tyre Co., Ltd.	Qingdao Qihang Tyre Co., Ltd.	12.91
Qingdao Qizhou Rubber Co., Ltd.	Qingdao Qizhou Rubber Co., Ltd.	12.91
Qingdao Sinorient International Ltd.	Qingdao Hengda Tyres Co., Ltd.	12.91
Qingdao Sinorient International Ltd.	Shifeng Double-Star Tire Co., Ltd.	12.91
Qingdao Sinorient International Ltd.	Tengzhou Broncho Tyre Co., Ltd.=	12.91
Shandong Huitong Tyre Co., Ltd.	Shandong Huitong Tyre Co., Ltd.	12.91
Shandong Jinyu Tyre Co., Ltd.	Shandong Jinyu Tyre Co., Ltd.	12.91
Shandong Taishan Tyre Co., Ltd.	Shandong Taishan Tyre Co., Ltd. =	12.91
Shandong Wanda Boto Tyre Co., Ltd.	Shandong Wanda Boto Tyre Co., Ltd.	12.91
Shandong Xingyuan International Trading Co., Ltd.	Shangdong Xingda Tyre Co., Ltd.	12.91
Shandong Xingyuan International Trading Co., Ltd.	Xingyuan Tyre Group Co., Ltd.	12.91
Techking Tires Limited	Shandong Xingda Tyre Co. Ltd.	12.91
Techking Tires Limited	Shandong Xingyuan International Trade Co. Ltd.	12.91
Techking Tires Limited	Shandong Xingyuan Rubber Co. Ltd.	12.91
Triangle Tyre Co., Ltd.	Triangle Tyre Co., Ltd.	12.91
Wendeng Sanfeng Tyre Co., Ltd.	Wendeng Sanfeng Tyre Co., Ltd.	12.91
Zhaoyuan Leo Rubber Co., Ltd.	Zhaoyuan Leo Rubber Co., Ltd.	12.91
PRC-Entity		210.48

Because the Department continues to find that the weighted-average dumping margin for subject merchandise produced and exported by Xugong is zero, we are instructing CBP to terminate suspension of liquidation of all imports of subject merchandise produced and exported by Xugong, entered, or withdrawn from warehouse, for consumption on or after February 20, 2008, the date of publication of the preliminary determination. CBP shall refund any cash deposit and release any bond or other security previously posted in connection with merchandise produced and exported by Xugong.

This notice constitutes the antidumping duty order with respect to certain new pneumatic OTR tires from the PRC, pursuant to section 736 (a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736 (a) of the Act and 19 CFR 351.211 (b).

Dated: August 29, 2008.

David M. Spooner

Assistant Secretary for Import Administration.

[FR Doc. E8–20569 Filed 9–3–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on an affirmative final determination by the U.S. International Trade Commission (ITC), the Department of Commerce (the Department) is issuing a countervailing duty order on certain new pneumatic off-the-road tires from the People's Republic of China (PRC). On August 28, 2008, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry. *See Certain Off-the-Road Tires From China*, USITC Pub. 4031, Inv. Nos. 701–TA–448 and 731–TA–1117 (Final) (August 2008).

DATES: *Effective Date:* September 4, 2008.

Contact Information: Mark Hoadley, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Case History

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on July 15, 2008, the Department published its final determination in the countervailing duty investigation of certain new pneumatic off-the-road tires from the PRC. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008).

On July 18, 2008, Starbright timely filed a ministerial error allegation. No other party to the proceeding filed a ministerial error allegation. After analyzing all interested party comments and rebuttals regarding the alleged ministerial error, the Department determined that it did not make a ministerial error. *See* Memorandum to Barbara Tillman, ''Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Allegations of a Ministerial Error in the Final Determination'' (July 30, 2008).

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-

the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[1] combine harvesters,[2] agricultural high clearance sprayers,[3] industrial tractors,[4] log-skidders,[5] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders; [6] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[7] front end loaders,[8] dozers,[9] lift trucks, straddle carriers,[10] graders,[11] mobile cranes,[12] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[13] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (e.g., tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type [14] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

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- Example: 8R17.5 LT, 8R17.5 HC;
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Countervailing Duty Order

On August 28, 2008, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured as a result of subsidized imports from the PRC. The ITC also determined that critical

[1] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[2] Combine harvesters are used to harvest crops such as corn or wheat.

[3] Agricultural sprayers are used to irrigate agricultural fields.

[4] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[5] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[6] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[7] Haul trucks, which may be either rigid frame or articulated (*i.e.,* able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[8] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[9] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[10] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[11] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[12] *I.e.*, ''on-site'' mobile cranes designed for off-highway use.

[13] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, etc.

[14] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (e.g., sold with or separately from subject merchandise).

circumstances do not exist with respect to subject imports from the PRC.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties on all unliquidated entries of OTR tires from the PRC entered, or withdrawn from warehouse, for consumption on or after December 17, 2007, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**, and before April 15, 2008, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of OTR tires made on or after April 15, 2008, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties, due to the Department's discontinuation, effective April 15, 2008, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation for OTR tires from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Producer/exporter	Subsidy rate (percent)
Guizhou Tire Co., Ltd. (GTC)	2.45
Hebei Starbright Tire Co., Ltd. (Starbright)	14.00
Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC)	6.85
All Others	5.62

This notice constitutes the countervailing duty order with respect to certain new pneumatic OTR tires from the PRC pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is issued and published in accordance with sections 705(c)(2) and 706 of the Act and 19 CFR 351.211.

Dated: August 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–20568 Filed 9–3–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 5, 2008, the Department of Commerce (''the Department'') published a notice preliminarily rescinding the administrative review on the antidumping duty order on heavy forged hand tools from the People's Republic of China, covering the period February 1, 2006, through January 31, 2007. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Rescission of Antidumping Duty Administrative Review,* 73 FR 11867 (March 5, 2008) (''*Preliminary Rescission*''). We gave interested parties an opportunity to comment on the *Preliminary Rescission.* Based upon our analysis of the comments and information received, we have made no changes to the preliminary rescission. We find that there is no evidence that Truper Herraminetas S.A. de C.V. (''Truper'') made sales of the subject merchandise to the United States during the period of review (''POR'').

DATES: *Effective Date:* September 4, 2008.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Case History

On March 5, 2008, the Department published its *Preliminary Rescission.* On April 4, 2008, Council Tool Company (a domestic interested party) filed a timely case brief. On August 9, 2008, Truper filed a timely rebuttal brief. On July 10, 2008, the Department published a notice extending the final results by 60 days to September 2, 2008.[1] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review,* 73 FR 39655 (July 10, 2008).

Scope of the Review

The products covered by these orders are HFHTs from the PRC, comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System of the United States (''HTSUS'') subheadings: 8205.20.60, 8205.59.30, 8201.30.00, 8201.40.60, and 8205.59.5510. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and

[1] Sixty days from July 3, 2008, is September 1, 2008. However, Department practice dictates that where a deadline falls on a federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Act,* 70 FR 24533 (May 10, 2005).

under. The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

The Department issued nine conclusive scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the ''Max Multi-Purpose Axe,'' imported by the Forrest Tool Company, to be within the scope of the axes/adzes order; (2) on March 8, 2001, the Department found ''18-inch'' and ''24-inch'' pry bars, produced without dies, imported by Olympia Industrial, Inc. and SMC Pacific Tools, Inc., to be within the scope of the bars/wedges order; (3) on March 8, 2001, the Department found the ''Pulaski'' tool, produced without dies by TMC, to be within the scope of the axes/adzes order; (4) on March 8, 2001, the Department found the ''skinning axe,'' imported by Import Traders, Inc., to be within the scope of the axes/adzes order; (5) on December 9, 2004, the Department found the ''MUTT,'' imported by Olympia Industrial, Inc., under HTSUS 8205.59.5510, to be within the scope of the axes/adzes order; (6) on May 23, 2005, the Department found 8-inch by 8-inch and 10-inch by 10-inch cast tampers, imported by Olympia Industrial, Inc. to be outside the scope of the orders; (7) on September 22, 2005, following remand, the U.S. Court of International Trade affirmed the Department's determination that cast picks are outside the scope of the order; (8) on October 14, 2005, the Department found the Mean Green Splitting Machine, imported by Avalanche Industries, under HTSUS 8201.40.60, to be within the scope of the bars/wedges order, and (9) on July 27, 2006, the Department found that the gooseneck claw wrecking bar which has a length of 17 7/8″ not including the curvature portion of the bar stock, imported by Central Purchasing, LLC, to be outside the scope of the order for bars and wedges.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (''*Final Decision Memo*''), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit of the main Department building. In addition, a copy of the *Final Decision Memo* can be accessed directly on our Web site at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the *Final Decision Memo* are identical in content.

Rescission of Review

In our *Preliminary Rescission,* in accordance with 19 CFR 351.213(d)(3), we preliminarily rescinded the review for all four orders for Truper. For these final results, in accordance with 19 CFR 351.213(d)(3), we are continuing to rescind this administrative review with respect to all four orders for Truper. The Department verified data from Truper, which supports its claim that it did not export subject merchandise to the United States during the POR. Furthermore, no party placed evidence on the record demonstrating that Truper exported the merchandise identified above during the POR to the United States since the issuance of the *Preliminary Rescission.* Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding this administrative review with respect to the hammers/sledges, picks/mattocks, axes/adzes, and bars/wedges for Truper.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a) and 777(i) of the Tariff Act of 1930, as amended.

Dated: August 28, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

I. Rescission of Antidumping Duty Administrative Review

[FR Doc. E8–20539 Filed 9–3–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Cut and Sew Men's and Boys' Worsted Wool Suits, Suit-Type Jackets and Trousers in the United States

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2009 tariff rate quotas on certain worsted wool fabric to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States for an allocation of the 2009 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 6, 2008. The Department will cause to be published in the **Federal Register** its determination to allocate the 2009 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 6, 2008.

ADDRESSES: Applications must be submitted to Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, D.C. 20230 (telephone: (202) 482-3400). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp.*

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2573.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108-429, by increasing the TRQ for worsted wool fabric with average fiber diameters greater than 18.5 microns, HTS 9902.51.11, to an annual total level of 5.5 million square meters, and extending it through 2007, and increasing the TRQ for average fiber diameters of 18.5 microns or less, HTS

9902.51.15 (previously 9902.51.12), to an annual total level of 5 million square meters and extending it through 2006. On August 17, 2006 the Act was further amended pursuant to the Pension Protection Act of 2006, Public Law 109-280, which extended both TRQs, 9902.51.11 and 9902.51.15, through 2009.

The Act requires that the TRQs be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. See 70 FR 61363; 19 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp* to the address listed above by 5 p.m. on October 6, 2008 in compliance with the requirements of 15 CFR 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 29, 2008.

R. Matthew Priest,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E8–20537 Filed 9–3–08; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics to Persons Who Weave Such Fabrics in the United States

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2009 tariff rate quotas on certain worsted wool fabric to persons who weave such fabrics in the United States.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who weave worsted wool fabrics in the United States for an allocation of the 2009 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by October 6, 2008. The Department will cause to be published in the **Federal Register** its determination to allocate the 2009 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on October 6, 2008.

ADDRESSES: Applications must be submitted to the Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, D.C. 20230 (telephone: (202) 482-3400). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp/fabric*.

FOR FURTHER INFORMATION CONTACT: Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2573.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. On December 3, 2004, the Act was further amended pursuant to the Miscellaneous Trade Act of 2004, Public Law 108-429. The 2004 amendment included authority for the Department to allocate a TRQ for new HTS category, HTS 9902.51.16. This HTS category refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment provided that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave such worsted wool fabric in the United States that is suitable for making men's and boys' suits. The TRQ for HTS 9902.51.16 provided for temporary reductions in the import duties on 2,000,000 square meters annually for 2005 and 2006. The amendment requires that the TRQ be allocated to persons who weave worsted wool fabric with average fiber diameter of 18.5 microns or less, which is suitable for use in making men's and boys' suits, in the United States. On August 17, 2006, the Act was further amended pursuant to the Pension Protection Act of 2006, Public Law 109-280, which extended the TRQ for HTS 9902.51.16 through 2009.

On October 24, 2005, the Department adopted final regulations establishing procedures for allocating the TRQ. See 70 FR 61363; 19 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp/fabric* to the address listed above by 5 p.m. on October 6, 2008 in compliance with the requirements of 15 CFR 335. Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 29, 2008.

R. Matthew Priest,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E8–20538 Filed 9–3–08; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC)

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a public meeting of the Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary for Communications and Information on spectrum management matters.

DATES: The meeting will be held on September 19, 2008, from 9:30 a.m. to 12:30 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the United States Department of Commerce, 1401 Constitution Ave. N.W., Room 5855 (the Secretary's Conference Room), Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue N.W., Room 4725, Washington, DC 20230 or emailed to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Eric Stark, Designated Federal Officer, at

(202) 482–1880 or *estark@ntia.doc.gov*; Joe Gattuso at (202) 482–0977 or *jgattuso@ntia.doc.gov*; and/or visit NTIA's web site at www.ntia.doc.gov.

SUPPLEMENTARY INFORMATION: *Background:* The Secretary of Commerce established the Committee to implement a recommendation of the President's Initiative on Spectrum Management pursuant to the President's November 29, 2004 Memorandum for the Heads of Executive Departments and Agencies on the subject of ''Spectrum Management for the 21st Century.''[1] This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management to enable the introduction of new spectrum-dependent technologies and services, including long-range spectrum planning and policy reforms for expediting the American public's access to broadband services, public safety, and digital television. The Committee functions solely as an advisory body in compliance with the FACA.

Matters to Be Considered: The Committee will receive recommendations and reports from working groups of its Technical Sharing Efficiencies subcommittee and Operational Sharing Efficiencies subcommittees. The Committee will also consider matters to be taken up at its next meeting. It will provide an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on September 19, 2008, from 9:30 a.m. to 12:30 p.m. Eastern Daylight Time. The times and the agenda topics are subject to change. Please refer to NTIA's Web site, *http://www.ntia.doc.gov*, for the most up-to-date meeting agenda.

Place: The meeting will be held at the United States Department of Commerce, 1401 Constitution Ave. N.W., Room 5855 (the Secretary's Conference Room), Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso, at (202) 482–0977 or jgattuso@ntia.doc.gov, at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments with the Committee at any time before or after a meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should send them to the above-listed address and must be received by close of business on September 15, 2008, to provide sufficient time for review. Comments received after September 15, 2008, will be distributed to the Committee but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a three and one-half inch computer diskette in HTML, ASCII, Word or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to spectrumadvisory@ntia.doc.gov. Comments provided via electronic mail may also be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee web page at *http://www.ntia.doc.gov/advisory/spectrum*.

Dated: August 29, 2008.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E8–20518 Filed 9–3–08; 8:45 am]

BILLING CODE 3510–60–S

[1] *President's Memorandum on Improving Spectrum Management for the 21st Century*, 49 Weekly Comp. Pres. Doc. 2875 (Nov. 29, 2004) (Executive Memorandum).

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled the AmeriCorps*VISTA Assessment of VISTA Project Sustainability to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Craig Kinnear at (202) 606–9708. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

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

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: *The OMB is particularly interested in comments which:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on January 17, 2008. This comment period ended March 17, 2008. No public comments were received from this notice.

Description

The Corporation is developing a systematic approach for assessing how

well local organizations with full-time AmeriCorps*VISTA members are able to sustain projects over the long-term. This study will evaluate the contributions of VISTA in strengthening local organizations serving low-income communities and develop a tool that can serve as a foundation for additional studies in the future. Information will be collected over time on the relevant characteristics of 250 closed VISTA projects. Closed projects are defined as projects that no longer have active VISTAs, although they still may be continuing without VISTA support. The original goals and objectives of the projects will be identified, as well as how the goals may have evolved over time. The study will evaluate the extent to which closed projects have been able to achieve their goals and will develop a model that identifies the likelihood that ongoing projects will be sustained beyond their third year of programming, after the VISTA members are no longer present. The study will include telephone interviews of the 250 projects and site visits to 40 projects.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: VISTA Evaluation Study.

Agency Number: None.

Affected Public: AmeriCorps*VISTA sponsoring organizations.

Total Telephone Interview Respondents: 250.

Frequency: Once.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Total Site Visit Respondents: 40.

Frequency: Once.

Average Time per Response: 1.5 hours.

Estimated Total Burden Hours: 60 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 27, 2008.

Jean Whaley,

*Director, AmeriCorps*VISTA.*

[FR Doc. E8–20491 Filed 9–3–08; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Partially Closed Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, September 22, 2008, from 8 a.m. to 10:55 a.m. The closed Executive Session will be held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in Russell Senate Office Building Room 385, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Koy, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone: 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. The proposed closed session from 11 a.m. to 12 p.m. will include a discussion of new and pending courts-martial and state criminal proceedings involving the Midshipmen attending the Naval Academy to include an update on the pending/ongoing sexual assault cases, rape cases, etc.

The proposed closed session from 11 a.m. to 12 p.m. will include a discussion of new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public.

Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c) (5), (6), and (7) of title 5, United States Code.

Dated: August 27, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–20499 Filed 9–3–08; 8:45 am]

BILLING CODE 3810–FF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting.

DATE & TIME: Thursday, September 18, 2008, 9 a.m.–4 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: Commissioners will hold a workshop discussion on Preparing for Election Day 2008 and Empowering Voters. Commissioners will consider and vote on whether to modify Advisory Opinion 07–003–A regarding Maintenance of Effort (MOE) funding, pursuant to HAVA, section 254(a)(7). Commissioners will consider and vote on a Proposed Replacement Advisory Opinion 07–003–B Regarding Maintenance of Effort. Commissioners will consider a Draft Policy for Notice and Public Comment; Commissioners will consider a Draft Policy for Joint Partnership Task Force of EAC and State Election Officials Regarding Spending of HAVA Funds; Commissioners will consider Proposed Administrative Regulations and receive an Update on Final Administrative Regulations. Commissioners will consider and vote on the Adoption of the Alternative Voting Methods Study. Commissioners will receive a briefing regarding the Best Practices to Ensure Voting Systems Perform Accurately and Securely on Election Day. Commissioners will receive an Update on the 2008 Requirements payments to States. Commissioners will consider comments received on the Draft EAC Guidance to States Regarding Updates to State Plans. The Commission will consider other administrative matters.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Election Director, U.S. Election Assistance Commission.

[FR Doc. E8–20606 Filed 9–2–08; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–25–000]

Colorado Interstate Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Raton 2010 Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

August 27, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will identify and address the environmental impacts that could result from the construction and operation of the Raton 2010 Expansion Project proposed by Colorado Interstate Gas Company (CIG). The EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period for this Notice will close on September 26, 2008. This is not your only opportunity to provide comments. Details on how to submit comments are provided in the Public Participation section of this notice.

Comments may be submitted in written form or verbally. In lieu of, or in addition to, sending written comments, you are invited to attend our public scoping meetings that have been scheduled in the project area. Three public scoping meetings are scheduled to be held at 7 p.m. on September 8, 2008 (MST) at the Huerfano County Community Center in Walsenburg, Colorado, 7 p.m. on September 9, 2008 at the McHarg Park Community Center in Avondale, Colorado, and at 7 p.m. on September 10, 2008 at the Trinidad State Junior College in Trinidad, Colorado. Additional details of the public scoping meetings are provided in the public participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers; all of which are encouraged to submit comments on the proposed project.

If you are a landowner receiving this notice, you may be contacted by a CIG representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

CIG proposes to construct the 118 miles of 16-inch diameter pipeline in Las Animas, Huerfano, Pueblo, and El Paso Counties, Colorado in two segments. Certain aboveground facilities are also proposed, i.e. meter stations. More specifically, CIG proposed the following project components:

- Spanish Peaks Lateral Line 247A—a 27-mile 16-inch diameter pipeline from the existing Line 222A in Las Animas County, Colorado to the intersection of existing Line 27A near the town of Aguilar in Las Animas County, Colorado;
- Aguilar Lateral Line 248A—a 91-mile 16-diameter pipeline from the existing Line 27A near the town of Aguilar, Colorado northerly through Huerfano and Pueblo Counties, Colorado to the intersection of existing Line 212A in El Paso County, Colorado; and
- One new Kennedy Meter Station in Las Animas County, Colorado, and modify the existing West Canyon Meter Station in Las Animas County, Colorado and the existing Bowie Meter Station in Weld County, Colorado.

The Project would increase firm capacity into CIG's system by 130,000 dekatherms per day (Dth/d). CIG plans to file an application by January of 2009.

A map depicting CIG's proposed facilities is attached to this notice as Appendix 1.[1]

Land Requirements for Construction

As proposed, the typical construction right-of-way for the project laterals would be 100-feet-wide for the Spanish Peaks Lateral and 85-feet-wide for the Aguilar Lateral. Following construction, CIG has proposed to retain a 50-foot-wide permanent right-of-way for operation of the project.

Based on preliminary information, construction and operation of the proposed lateral and associated aboveground facilities would affect about 1,301 acres of land. Following construction, about 715 acres would be maintained as permanent right-of-way, and about 1.3 acres of land would be maintained as new aboveground facility sites. The remaining temporary workspace would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from the approval of an interstate natural gas pipeline. By this notice, we[2] are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

The purpose of the Pre-filing Process is to seek public and agency input early in the project planning phase and encourage involvement by interested stakeholders in a manner that allows for the early identification and resolution of

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Web site at the eLibrary link or from the Commission's Public Reference Room or by calling (202) 502–8371. For instructions on connecting to eLibrary refer to the public participation section of this notice. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section at the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to CIG.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

environmental issues. We will work with all interested stakeholders to identify and attempt to address issues before CIG files its application with the FERC. A diagram depicting the environmental review process for the proposed project is attached to this notice as Appendix 2.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the environmental issues. By this notice, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA. As part of the Pre-filing Process review, CIG sponsored public open houses in the project area to explain the environmental review process to interested stakeholders and take comments about the project.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils;
- Water Resources;
- Wetlands and Vegetation;
- Fish, Wildlife, Threatened and Endangered Species;
- Land Use, Recreation, and Visual Resources;
- Air Quality and Noise;
- Cultural Resources;
- Reliability and Safety; and
- Cumulative environmental impacts.

In the EA, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be in the EA. The EA will be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 30-day comment period will be allotted for review of the EA. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before September 26, 2008.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number (Docket No. PF08–25–000) with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

1. You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

2. You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

3. You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of your comments for the attention of OEP/DG2E/Gas Branch 2, PJ–11.2
- Reference Docket No. PF08–25–000 on the original and both copies.

The three public scoping meetings are scheduled at the locations described below:

Date and time	Location
September 8, 2008, 7 p.m.–9:30 p.m.	Huerfano County Community Center, 928 Russell Ave., Walsenburg, CO 81089, 719–738–1910.
September 9, 2008, 7 p.m.–9:30 p.m.	McHarg Park Community Center, 405 2nd Street, Avondale, CO 81022, 719–583–2002.
September 10, 2008, 7 p.m.–9:30 p.m.	Trinidad State Junior College, Berg Building Room 217, 600 Prospect Street, Trinidad, CO 81082, 719–846–5533.

Environmental Mailing List

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 3). We may mail the EA for comment. If you are interested in receiving it, please return the Information Request. If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Additional Information

Once CIG formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Additional information about the project is available from the Commission's Office of External Affairs,

at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, CIG has established a Web site for this project at *http://www.elpaso.com/ratonexpansion/default.shtm*. The Web site includes a project overview, newsletters, and answers to frequently asked questions. CIG has also established a single point of contact, Mr. David R. Anderson, for additional questions or information at 1–877–598–5263 or by e-mail at *david.r.anderson@elpaso.com.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20503 Filed 9–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1264–001]

Arizona Public Service Company; Notice of Filing

August 27, 2008.

Take notice that on August 26, 2008, Arizona Public Service Company filed an amendment to its proposed revisions to sections 29.2.9 and 30.2 of its Open Access Transmission Tariff pursuant to section 205 of the Federal Power Act, U.S.C. 824d and Part 35 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20504 Filed 9–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1438–000]

New York Independent System Operator, Inc.; Notice of Filing

August 27, 2008.

Take notice that on August 22, 2008, New York Independent System Operator, Inc. tendered for filing amendments to the Market Administration and Control Area Services Tariff, including Attachments C and J.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20506 Filed 9–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–17–006]

New York Independent System Operator, Inc.; Notice of Filing

August 27, 2008.

Take notice that on August 18, 2008, New York Independent System Operator, Inc. filed proposed revisions to its Market Administration and Control Area Services Tariff in compliance with Ordering Paragraph (D) of the Commission's Order on Remand issued on July 18, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20507 Filed 9–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1407–000]

San Diego Gas & Electric Company; Notice of Filing

August 27, 2008.

Take notice that on August 14, 2008, San Diego Gas & Electric Company filed its Transmission Owner Formula 3 Cycle 2 and Transmission Owner Formula 2 Final True-Up filing pursuant to section 205 of the Federal Power Act and the Settlement the Commission Approved on May 18, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–20505 Filed 9–3–08; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PS Docket No. 08–287, OMB Control Number 3060–1113, DA 08–166]

Commercial Mobile Service Providers Must File Elections Regarding Participation in the Commercial Mobile Alert System by September 8, 2008

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that, as required by the Warning, Alert and Response Network (WARN) Act, by September 8, 2008, each Commercial Mobile Service (CMS) provider must file an election with the Federal Communications Commission (''FCC'' or ''Commission'') indicating whether or not it intends to transmit emergency alerts as part of the Commercial Mobile Alert System.

DATES: File elections by September 8, 2008.

ADDRESSES: PS Docket No. 08–146 is a docket specially created to receive these election letters. To file electronically in PS Docket No. 08–146, CMS providers must utilize the Commission's Electronic Comment Filing System (ECFS), which is accessible at the Commission's Web site, *http://www.fcc.gov/cgb/ecfs.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers, Chief, Policy Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418–0952.

SUPPLEMENTARY INFORMATON: On August 7, 2008, the Commission released the Third Report and Order in PS Docket No. 07–287, FCC 08–184 (CMAS Third Report and Order) implementing provisions of the Warning, Alert and Response Network (''WARN'') Act, including, inter alia, the statutory requirement that within 30 days of release of the CMAS Third Report and Order, each Commercial Mobile Service (CMS) provider must file an election with the Commission indicating whether or not it intends to transmit emergency alerts as part of the Commercial Mobile Alert System (CMAS). The CMAS Third Report and Order noted that this filing requirement was subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. OMB pre-approved the filing requirement on February 4, 2008.

PS Docket No. 08–146 is a docket specially created to receive these election letters. To file electronically in PS Docket No. 08–146, CMS providers must utilize the Commission's Electronic Comment Filing System (ECFS), which is accessible at the Commission's Web site, *http://www.fcc.gov/cgb/ecfs.*

FCC Notice Required by the Paperwork Reduction Act

As required by the Paperwork Reduction act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB pre-approval on February 4, 2008, for the collection of information described in this public notice. Public reporting burden for this collection of information is estimated to be 6 minutes per response, including the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This collection of information is for the purpose of assisting the Commission in overseeing the Commercial Mobile Service Alert System. This collection is mandatory under the Warning, Alert and Response Network Act, Section 602(b)(2)(A), Title VI of the Security and Accountability for Every Port Act of 2006, Public Law No. 109–347, 120 Stat. 1884 (2006). Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to Federal Communications Commission, AMD–PERM, Washington, DC 20554, Paperwork Reduction Project (3060–1113), or via the Internet to *PRA@fcc.gov.* DO NOT SEND ELECTION LETTERS TO THIS ADDRESS.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB Control Number. This collection has been assigned OMB Control Number 3060–1113 and its expiration date is February 28, 2011.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Lisa M. Fowlkes,

Deputy Chief, Public Safety & Homeland Security Bureau.

[FR Doc. E8–20542 Filed 9–3–08; 8:45 am]

BILLING CODE 6712–01–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 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

Charity Cargo, LLC, 1140 Kam IV Road, Honolulu, HI 96819, *Officers:* Esteven Ganal, Member (Qualifying Individual), Jessie Luga, Member,

Midwest Consolidators International, Inc.dba Midwest Maritime, 1001 LaBore Industrial Court, Suite A, Vadnais Heights, MN 55101, James W. Fligge, President (Qualifying Individual), Debora A. Graves, Vice President,

TSL International, Inc., 138 Bay 14 Street, Brooklyn, NY 11214, *Officer:* Susan Lee, President (Qualifying Individual),

ACS Logistics, Inc., 5005 West Royal Lane, Suite 198, Irving, TX 75063, *Officer:* George S. Jernigan, Int'l. Opera. Specialist (Qualifying Individual),

Shine International Transportation (LA) Corp., 2001 Santa Anita Avenue, Suite 203A, South El Monte, CA 91733, *Officer:* Jacky Li, President (Qualifying Individual),

Aprile USA, Inc., 1370 Broadway, Suite 1006, New York, NY 10018, *Officer:* Anna Cilento, Import-Export Coordinator (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

NMT USA, Inc., 4615 Gulf Boulevard, Suite 116, Saint Petersburg, FL 33706, *Officers:* Kevin J. Skooglund, Secretary (Qualifying Individual), Joseph P. Schulte, President,

Daleray Corporation, 3350 SW 3 Avenue, Suite 207, Fort Lauderdale, FL 33315, *Officers:* William R. Fulford, Vice President (Qualifying Individual), Dale Kloss, President,

Fracht FWO, Inc. dba Helvetia Container Line, 29 W. 30th Street, 12th Floor, New York, NY 10001, *Officer:* Werner Seyfried, Vice President (Qualifying Individual),

United Logistics Corp., 3650 Mansell Road, Suite 400, Alpharetta, GA 30022, *Officer:* Kieutien Nguyen, Secretary (Qualifying Individual),

Pacific Atlantic Lines Georgia, Inc., 15 Royal Drive, Suite A, Forest Park, GA 30297, *Officer:* Amadu K. Jah, President (Qualifying Individual),

Cargotech, LLC, 400 South Avenue, Middlesex, NJ 08846, *Officer:* Richard Wayne Robinson, President (Qualifying Individual),

Danzas Corporation dba DHL Global Forwarding, Danmar Lines Ltd; DHL Danzas Air & Ocean, *Officer:* Cas Pouderoven, Vice President (Qualifying Individual),

AES Logistics, Inc. dba AES Worldwide dba AES Logistics, 140 SW 153rd Street, Burien, WA 98166, *Officer:* Robert A. Schwieger, Vice President (Qualifying Individual),

Costex Corporation dba CTP Logistics, 6100 N.W. 77th Court, Miami, FL 33166, *Officers:* Jorge Espinoza, Secretary (Qualifying Individual), Gilberto Uribe, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Prologistics, Inc., 9715 Carnegie Avenue, El Paso, TX 79925, *Officers:* Carol A. Runnels, President (Qualifying Individual), James S. Runnels, Vice President,

ASL Global Logistics, 15836 Lee Road, Houston, TX 77032, *Officers:* Nidal Younes, Logistics Manager (Qualifying Individual), Wassim A. Agha, President,

AAAA Forwarding, Inc., 1661 Rainbow Drive, Clearwater, FL 33755, *Officers:* Dean C. Cummings, President (Qualifying Individual), Patricia A. Cummings, Corp. Secretary.

Dated: August 29, 2008.

Tanga S. FitzGibbon,

Alternate Federal Register Liaison Officer.

[FR Doc. E8–20487 Filed 9–3–08; 8:45 am]

BILLING CODE 6730–01–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 September 17, 2008.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group)

101 Market Street, San Francisco, California 94105–1579:

1. Murray Pasternack, San Clemente, California, to acquire additional voting shares of Capital Bank, San Juan Capistrano, California.

Board of Governors of the Federal Reserve System, August 28, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–20453 Filed 9–3–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 18, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Joseph E. O'Brien, Peoria, Illinois, to acquire control of Marshall–Putnam County Bancorporation, Inc., and thereby indirectly acquire control of Marshall County State Bank, both of Varna, Illinois.

Board of Governors of the Federal Reserve System, August 29, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–20474 Filed 9–3–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 2008.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. SCJ, Inc., and CCFW, Inc. (dba Carpenter & Company), Irvine, California, to engage *de novo*, directly, in leasing personal or real property, financial and investment advisory activities, agency transactional services for customer investments, and management consulting and counseling activities, pursuant to sections 225.28(b)(3), (b)(6), (b)(7), and (b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, August 28, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–20454 Filed 9–3–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Social Psychology, Personality and Interpersonal Processes Study Section, October 6, 2008, 8 a.m. to October 6, 2008, 5 p.m., Admiral Fell Inn, 888 South Broadway, Baltimore, MD, 21231 which was published in the **Federal Register** on August 21, 2008, 73 FR 49465–49467.

The meeting will be held at the Pier V Hotel, 711 Eastern Avenue, Baltimore, MD 21205. The meeting date and time remain the same. The meeting is closed to the public.

Dated: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20433 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Macromolecular Structure and Function B Study Section, October 6, 2008, 8 a.m. to October 7, 2008, 6 p.m., Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC, 20037 which was published in the **Federal Register** on August 21, 2008, 73 FR 49465–49467.

The meeting will be held one day only October 6, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20434 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neuroendocrinology, Neuroimmunology, and Behavior Study Section, October 7, 2008, 8 a.m. to October 8, 2008, 5 p.m., Sir Frances Drake Hotel, 450 Powell Street, San Francisco, CA, 94102 which was published in the **Federal Register** on August 25, 2008, 73 FR 50046–50048.

The meeting will be held one day only October 7, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20435 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

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. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

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 intramural programs and projects and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the intramural programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council; NACHHD Subcommittee on Planning and Policy.

Date: September 5, 2008.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate the Division of Intramural Research site visit reports.

Place: National Institutes of Health, Building 31, 31 Center Drive Room 2A48, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elizabeth Wehr, Office of Science Policy, Analysis and Communication, NICHD/NIH/DHHS, 31 Center Drive, Suite 2A18, Bethesda, MD 20892, 301–496–0805.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the Executive Secretary's need for confirmation from subcommittee members on their availability to participate in this meeting.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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: August 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20325 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; AA2 and AA3 Member Conflict Applications Review.

Date: November 3, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry R. Williams, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 3035, Rockville, MD 20852 301–443–2926, *williamsL5@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20323 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R21s.

Date: November 14, 2008.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marilyn Moore-Hoon, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20324 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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: NIDCR Special Grants Review Committee.

Date: October 14–15, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, El Tropicano Riverwalk, 110 Lexington Avenue, San Antonio, TX 78205.

Contact Person: Raj K Krishnaraju, PhD, MS, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20326 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

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. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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; A Cooperative Research Partnerships for Biodefense and Emerging Infectious Diseases SEP 3.

Date: September 22, 2008.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3257, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Michelle M Timmerman, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3147, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@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: August 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20327 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review R21s and R03s.

Date: October 15, 2008.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National lnstitutes of Health, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Insitutes of Health, 6701 Democracy Blvd, Room 664, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy,

[FR Doc. E8–20430 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

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. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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; A Cooperative Research Partnerships for Biodefense and Emerging Infectious Diseases SEP 4.

Date: September 25, 2008.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3257, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Michelle M Timmerman, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3147, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@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: August 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–20432 Filed 9–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0383]

Collection of Information under Review by Office of Management and Budget: OMB Control Numbers: 1625–0028, 1625–0034, and 1625–0043

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding three Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0028, Course Approval and Records for Merchant Marine Training Schools; (2) 1625–0034, Ships' Stores Certification for Hazardous Materials Aboard Ships, and (3) 1625–0043, Ports and Waterways Safety—Title 33 CFR Subchapter P. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before October 6, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2008–0383] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at *http://www.regulation.gov*. (b) To OIRA by *e-mail via: oira_submission@omb.eop.gov.*

(2) Mail or Hand delivery. (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (*Attn:* Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–0383]. For your comments to OIRA to be considered, it is best if they are received on or before October 6, 2008.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0383], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number [USCG–2008–0383] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 29141, May 20, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Course Approval and Records for Merchant Marine Training Schools.

OMB Control Number: 1625–0028.

Type of Request: Extension of a currently approved collection.

Affected Public: Merchant marine training schools.

Abstract: The information is needed to ensure merchant marine training schools meet minimal statutory requirements. The information is used to approve the curriculum, facility, and faculty for these schools. Section 7315 of 46 U.S.C. authorizes an applicant for a license or document to substitute the completion of an approved course for a portion of the required sea service. Section 10.302 of 46 CFR contains the Coast Guard regulations for course approval.

Burden Estimate: The estimated burden has increased from 27,675 hours to 97,260 hours per year.

2. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.

OMB Control Number: 1625–0034.

Type of Request: Extension of a currently approved collection.

Affected Public: Suppliers and manufacturers of hazardous products used on ships.

Abstract: The information is needed to ensure personnel aboard ships are made aware of the proper usage and stowage instructions for certain hazardous materials. Provisions are made for waivers of products in special DOT hazard classes. Section 3306 of 46 U.S.C. authorizes the Coast Guard to prescribe regulations for the transportation, stowage, and use of ships' stores and supplies of a dangerous nature. Part 147 of 46 CFR contains the regulations for hazardous ships' stores.

Burden Estimate: The estimated burden has increased from 9 hours to 12 hours per year.

3. *Title:* Ports and Waterways Safety—Title 33 CFR Subchapter P.

OMB Control Number: 1625–0043.

Type of Request: Extension of a currently approved collection.

Affected Public: Master, owner, or agent of a vessel.

Abstract: This collection of information allows the master, owner, or agent of a vessel affected by these rules to request a deviation from the requirements governing navigation safety equipment to the extent that there is no reduction in safety. Provisions in 33 CFR chapter I, subchapter P, allow any person directly affected by the rules therein to request a deviation from any of the requirements as long as it does not compromise safety. This collection enables the Coast Guard to evaluate information the respondent supplies for determination of whether it justifies the request for a deviation.

Burden Estimate: The estimated burden has decreased from 3,171 hours to 2,865 hours per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 27, 2008.

D. T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–20479 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0856]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet in Washington, DC to discuss various issues relating to national maritime security. This meeting will be open to the public.

DATES: The Committee will meet on Thursday, September 18, 2008 from 9 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 15, 2008. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 15, 2008.

ADDRESSES: The Committee will meet at the Association of American Railroads Conference Center, Conference Room C, 50 F Street, NW., 4th Floor, Washington, DC 20001. Additionally, this meeting will be broadcast via a web enabled interactive online format. Send written material and requests to make oral presentations to Mr. Ryan Owens, Assistant to Designated Federal Officer of the National Maritime Security Advisory Committee, 2100 2nd Street, SW.; Room 5302; Washington, DC 20593. You may also e-mail material to *ryan.f.owens@uscg.mil*. This notice may be viewed in our online docket, USCG–2008–0856, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Assistant to DFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the September 18, 2008 Committee meeting is as follows:

(1) Briefing on Sensitive Security Information.

(2) Presentation and Discussion of the Seafarer's Access Working Group report.

(3) Briefing and discussion on the USCG/CBP Senior Guidance Team.

(4) Briefing and Discussion on the USCG/CBP Joint Command Center Initiatives.

Procedural

This meeting is open to the public and will also be conducted via an online meeting format. Please note that the meeting may close early if all business is finished. Seating is very limited, and members of the public wishing to attend should register with Mr. Ryan Owens, Assistant to DFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil* no later than September 15, 2008. Additionally, if you would like to participate in this meeting via the online web format, please log onto *https://fedgov.webex.com/fedgov/onstage/g.php?t=a&d=697687813* and follow the online instructions to register for this meeting. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the assistant to the DFO no later than Monday, September 8, 2008. Written material for distribution at a meeting should reach the Coast Guard no later than Monday, September 15, 2008. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the assistant to the DFO no later than September 15, 2008.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the assistant to the DFO as soon as possible.

Dated: August 28, 2008.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Chief, Office of Port and Facility Activities, Designated Federal Official, NMSAC.

[FR Doc. E8–20482 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–590, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–590, Registration for Classification as Refugee; OMB Control No. 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 3, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC, 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0068 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–590. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 (.583) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: August 28, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–20484 Filed 9–3–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Revision of a Currently Approved Information Collection

ACTION: Revision of Currently Approved Information Collection; Form I–901, Fee Remittance for Certain F, J and M Non-immigrants; OMB No. 1653–0034.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has previously submitted the above referenced information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Certain fees related to this information collection have been changed. This document contains revisions to certain portions of the form that were previously published that are related to those fee changes.

Revision

- On Page 2 of the Instructions, Item 18B is revised as follows: *Expedited Delivery: There will be an added shipping and handling fee of $35.00 for this option. Your receipt will be delivered in an expedited manner to the address listed in item numbers 4–8 on the Form I–901.*

Dated: August 27, 2008.

Lee Shirkey,

Chief, Records Management Branch Chief, United States Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E8–20455 Filed 9–3–08; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5194–N–13]

Notice of Proposed Information Collection for Public Comment; Capital Fund

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD will submit the proposal for collection of information described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department will request this previously approved information collection be extended, and is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 3, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048, (this is not a toll-free number) or e-mail Ms.

Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–708–0713, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will request an extension of and submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected 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: Public Housing Capital Fund Program.

OMB Control Number: 2577–0157.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) must provide information to HUD various stages of implementing Capital Fund grant. This grant is used for modernization of existing public housing stock and development of new units, which requires contract administration and construction contracting.

Agency form numbers, if applicable: HUD 50029, HUD 50030, HUD 50070, HUD 50071, HUD 5084, HUD 5087, HUD 51000, HUD 51001, HUD 51002, HUD 51003, HUD 51004, HUD 51915, HUD 51915A, HUD 51971 I, HUD 51971 II, HUD 52396, HUD 52427, HUD 52482, HUD 52483 A, HUD 52484, HUD 52485, HUD 52651 A, HUD 52829, HUD 52830, HUD 52832, HUD 52833, HUD 52845, HUD 52846, HUD 52847, HUD 52849, HUD 53001, HUD 53015, HUD 5370, HUD 5370EZ, HUD 5370C, HUD 5372, HUD 5378, HUD 5460.

Members of affected public: Business or other for-profit, State, Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 3,105 at the total reporting burden is 267,833 hours.

Status of the proposed information collection: Revision of currently approved and new collections to incorporate OMB information collections.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 27, 2008.

Bessy Kong,

Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. E8–20472 Filed 9–3–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sporting Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Sporting Conservation Council (Council). The meeting agenda includes policy discussions on implementation of the Executive Order on hunting heritage and wildlife conservation and plans for a 2008 Conference on North American Wildlife Policy regarding the North American Conservation Model; State/Federal/Tribal Wildlife Management; Habitat Conservation and Management; Funding for Wildlife Conservation; and Perpetuating Hunter Traditions. This meeting is open to the public, and will include a session for the public to comment.

DATES: We will hold the meeting on September 17, 2008, from 2 p.m. to 4 p.m.; the public comment session will be from 2:30 p.m. to 3 p.m.

ADDRESSES: The meeting will be held in the Olympic Boardroom at the Hyatt Regency Hotel at 400 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Phyllis T. Seitts, 9828 North 31st Avenue, Phoenix, AZ 85051–2517; 602–906–5603 (phone); or *Twinkle_Thompson-Seitts@blm.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the Council in February 2006 (71 FR 11220, March 6, 2006). The Council's mission is to provide advice and guidance to the Federal Government through the Department of the Interior on how to increase public awareness of: (1) The importance of wildlife resources, (2) the social and economic benefits of recreational hunting, and (3) wildlife conservation efforts that benefit recreational hunting and wildlife resources.

The Secretary of the Interior and the Secretary of Agriculture signed an amended charter for the Council in June 2006 and July 2006, respectively. The revised charter states that the Council will provide advice and guidance to the Federal Government through the Department of the Interior and the Department of Agriculture.

The Council will hold a meeting on the date shown in the **DATES** section at the address shown in the **ADDRESSES** section. The meeting will include a session for the public to comment. Previous Council meetings this year occurred on April 8 in Denver, CO (73 FR 14997, March 20, 2008), and June 17 in Washington, DC (73 FR 31501, June 2, 2008).

Dated: August 29, 2008.

Phyllis T. Seitts,

Designated Federal Officer, Sporting Conservation Council.

[FR Doc. E8–20523 Filed 9–3–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection: Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB a new information collection request (ICR) for review and approval. This notice provides the public an opportunity to comment on the paperwork burden of this collection.

DATES: You must submit comment on or before November 3, 2008.

ADDRESSES: Send your comments to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150-C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, LANDSAT.

FOR FURTHER INFORMATION CONTACT: Earlene Swann by mail at U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525, or by telephone at (970) 226–9346.

SUPPLEMENTARY INFORMATION:

Correction: This notice was originally published on August 21, 2008 Volume 73 number 163 pages 49472–49473. The corrections are as follows: the day to submit comments was incorrect and should have given the public 60 instead of 30 days to respond to this notice.

Title: The Societal Value of Moderate Resolution Satellite Imagery.

OMB Control Number: 1028-new.

Abstract:

USGS Geography investigates some of the most pressing natural resource and environmental issues of our Nation. Observing the Earth with remote sensing satellites, the USGS monitors and analyzes changes on the land, studies connections between people and the land, and provides society with relevant science information to inform public decisions. The USGS's Land Remote Sensing (LRS) Program has initiated a study on the benefits of Landsat imagery. The last comprehensive evaluations of the costs of moderate resolution satellite imagery (such as Landsat) were completed over 30 years ago. This study will attempt to understand the current uses and benefits of the Landsat program. This collection is important because it will provide information that the USGS LRS Program needs to better formulate the Program's new strategic plan.

The information collection process will be conducted by scientists and staff in the Policy Analysis and Science Assistance Branch (PASA) of the USGS. The information collection will be conducted online. The electronic collection will use Dilman's TDM method for Internet Surveys.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

Frequency of Collection: One time only.

Respondent's Obligation: Voluntary.

Estimated Number and Description of Respondents: 2500 state and local land management officials, scientists, and geographic researchers.

Estimated Number of Responses: 2500 responses.

Annual Burden Hours: 750 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden will average 18 minutes per response. This includes the time for reviewing instructions and completing an on-line survey.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c) (2) (A) (44U.S.C. 3501, et seq.) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments. We invite comments concerning this information collection 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.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60 day public comment period.

USGS Information Collection Clearance Officer: Phadrea D. Ponds 970–226–9445.

Dated: August 26, 2008.

D. Bryant Cramer,

Executive Advisor for Land Imaging.

[FR Doc. E8–20490 Filed 9–3–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–024–08–1610–DQ–089L]

Notice of Availability of the Record of Decision for the Kobuk-Seward Peninsula Resource Management Plan/Environmental Impact Statement (RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: The BLM announces the availability of the Record of Decision (ROD) and Approved RMP for the Kobuk-Seward Peninsula planning area, located in northwest Alaska. The State Director signed the ROD on September 4, 2008 which constitutes the final decision of the BLM and makes the approved RMP effective immediately.

ADDRESSES: Copies of the Kobuk-Seward Peninsula ROD and Approved RMP are available on request from the Field Manager, Central Yukon Field Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709, or via the Internet at *http://www.blm.gov/ak.*

FOR FURTHER INFORMATION CONTACT: Shelly Jacobson, Field Manager, Central Yukon Field Office, 1150 University Avenue, Fairbanks, AK 99709, (907) 474–2200 or toll free (800) 437–7021.

SUPPLEMENTARY INFORMATION: The Kobuk-Seward Peninsula RMP was developed with broad public participation through collaborative planning lasting more than four years. This ROD and Approved RMP addresses management of approximately 11.9 million acres of BLM-administered public land and mineral estate in the planning area. The Kobuk-Seward Peninsula ROD and Approved RMP are designed to achieve or maintain desired future conditions developed through planning. It includes a series of management actions to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, cultural and visual resources, and recreation.

The Kobuk-Seward Peninsula Approved RMP is the same as Alternative D in the Proposed RMP/Final EIS, published in September 2007

with the exception of certain modifications and clarifications. The BLM received six protests to the Proposed RMP/Final EIS. Four of those who submitted protests were determined to have standing and the BLM Director resolved the protests without requiring significant changes to decisions in the Proposed RMP/Final EIS. The modifications and clarifications to the proposed plan are outlined in the ROD.

No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS.

The ROD and Approved RMP include a decision requiring air taxi operators and transporters to obtain commercial permits to operate in the Squirrel River Special Recreation Management Area. This decision is found in section III.D. Implementation Decisions of the ROD. This is an implementation-level decision appealable to the Interior Board of Land Appeals (IBLA) under 43 CFR Part 4. Any party adversely affected by this decision may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR Part 4, Subpart E. Please consult the appropriate regulations for further information on the appeal requirements.

Authority: H–1790–1 National Environmental Policy Act Handbook—January 30, 2008.

Vincent Galterio,

Acting State Director.

[FR Doc. E8–20406 Filed 9–3–08; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1143 (Final)]

Small Diameter Graphite Electrodes From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1143 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of small diameter graphite electrodes, provided for in subheading 8545.11.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* August 21, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of small diameter graphite electrodes from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 17, 2008, with the Commission and Commerce by SGL Carbon LLC, Charlotte, NC, and Superior Graphite Co., Chicago, IL.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 16, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 6, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 23, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 30, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. Small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations.''

business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 29, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 13, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before January 13, 2009. On January 29, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 2, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–20496 Filed 9–3–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. Australia FTA–103–021]

Viscose Rayon Staple Fiber: Probable Effect of Modification of U.S.-Australia Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following a request received August 14, 2008, from the Office of the United States Trade Representative (USTR) under authority delegated by the President and pursuant to section 104 of the United States-Australia Free Trade Agreement (USAFTA) Implementation Act, the U.S. International Trade Commission (Commission) instituted Investigation No. Australia FTA–103–021, Viscose Rayon Staple Fiber: Probable Effect of Modification of U.S.-Australia Free Trade Agreement Rules of Origin.

DATES: September 17, 2008: Deadline for filing all written statements. October 23, 2008: Transmittal of Commission report to the Office of the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm*.

FOR FURTHER INFORMATION CONTACT: Project Leaders Jackie Jones (202–205–3466 or *jackie.jones@usitc.gov*) or Don Sussman (202–205–3331 or *donald.sussman@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Chapter 4 and Annex 4–A of the USAFTA contain the rules of origin for textiles and apparel for application of the tariff provisions of the USAFTA. These rules are set forth for the United States in general note 28 to the Harmonized Tariff Schedule (HTS). According to the request letter, U.S. negotiators have recently reached agreement in principle with representatives of the Government of Australia to modify the USAFTA rules of origin for certain yarns because it has been determined that U.S. and Australian producers are not able to produce viscose rayon staple fiber in commercial quantities in a timely manner. Information supplied to the Commission indicates that the yarns affected include blends of viscose rayon staple fibers with synthetic fibers, e.g., polyester, and with other artificial fibers, e.g., acetate. Section 203(o) of the United States-Australia Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 104 of the Act, to proclaim such modifications to the rules of origin as are necessary to implement an agreement with Australia pursuant to Article 4.2.5 of the Agreement. One of the requirements set out in section 104 of the Act is that the President obtains advice regarding the proposed action from the United States International Trade Commission.

The request letter asks that the Commission provide advice on the probable effect of the proposed modification of the USAFTA rules of origin noted above on U.S. trade under the USAFTA, on total U.S. trade, and on domestic producers of the affected articles. As requested, the Commission will submit its advice to USTR by

October 23, 2008, and shortly thereafter will issue a public version of the report with any confidential business information deleted. Additional information concerning the articles and the proposed modifications can be obtained by accessing the electronic version of this investigation and the USTR request letter at the Commission Internet site (*http://www.usitc.gov*). The current USAFTA rules of origin applicable to U.S. imports can be found in general note 28 of the 2008 HTS (see General Notes link at *http://www.usitc.gov/tata/hts/bychapter/index.htm*). The HTS subheading affected is 5510.90. All other subheadings covered by the current rules of origin would experience no change.

Written Submissions: No public hearing is planned. However, interested parties are invited to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., September 17, 2008. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the confidential or non-confidential version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Issued: August 28, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–20495 Filed 9–3–08; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for Nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for three upcoming vacancies on NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI): radiation oncologist with experience in gamma stereotactic radiosurgery, nuclear medicine physicist, and radiation safety officer.

DATES: Nominations are due on or before November 3, 2008.

Nomination Process: Submit an electronic copy of resume or curriculum vitae to Ms. Ashley Tull, *ashley.tull@nrc.gov*. Please ensure that resume or curriculum vitae includes the following information, if applicable: Education; certification; professional association membership and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s).

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Tull, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (240) 888–7129; *ashley.tull@nrc.gov*.

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing and inspections; and bringing key issues to the attention of NRC, for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) nuclear medicine physicist; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; and (k) health care administrator.

NRC is inviting nominations for the nuclear medicine physicist, radiation oncologist, and radiation safety officer appointments to the ACMUI. The term of the individuals currently occupying these positions will end May 19, 2009, September 30, 2009 and September 30, 2009, respectively. Committee members currently serve a four-year term and may be considered for reappointment to an additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel (including per-diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland this 28th day of August 2008.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E8–20477 Filed 9–3–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–266–LA; ASLBP No. 08–870–01–LA–BD01]

FPL Energy, Point Beach, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

FPL Energy, Point Beach, LLC (Point Beach Nuclear Plant, Unit 1)

This proceeding involves a license amendment request from FPL Energy, Point Beach, LLC proposing an interim revision to the technical specifications for the Point Beach Nuclear Plant, Unit 1, in Manitowoc County, Wisconsin. In response to an August 5, 2008, Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing (73 FR 45,479, 45,481), a request for hearing has been submitted by Thomas Saporito on behalf of himself and Saporito Energy Consultants.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Thomas S. Moore, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Mark O. Barnett, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR. 49,139).

Issued at Rockville, Maryland, this 28th day of August 2008.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel,

[FR Doc. E8–20488 Filed 9–3–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on September 23, 2008, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Tuesday, September 23, 2008—8:30 a.m. until 5 p.m.

The Subcommittee will discuss the NRC staff's progress on resolving Generic Safety Issue–191, ''Assessment of Debris Accumulation on PWR Sump Performance.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, consultants to the staff, industry representatives 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 Officer, Mr. Derek Widmayer, at 301–415–7366, 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 September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:45 a.m. and 4:30 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: August 27, 2008.

Antonio Dias,

Chief, Reactor Safety Branch B.

[FR Doc. E8–20483 Filed 9–3–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

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 an Open Meeting on September 8, 2008 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will hear oral argument in an appeal by Brendan E. Murray from the decision of an administrative law judge. The law judge found that Murray, formerly a managing director of registered investment adviser Cornerstone Equity Advisers, Inc. (''Cornerstone'') and secretary to Cornerstone's advisory clients the Cornerstone Funds, Inc. (the ''Funds''), willfully aided and abetted and caused Cornerstone to violate antifraud provisions of the Investment Advisers Act of 1940, and that Murray converted assets of the Funds in violation of the Investment Company Act of 1940. The law judge barred Murray from associating with any investment adviser and from working for any registered investment company, assessed a civil money penalty, imposed a cease-and-desist order, and ordered disgorgement plus prejudgment interest.

Among the issues likely to be argued are whether Murray is liable as charged, whether Murray acted with scienter, and whether there is merit to Murray's contention that he was denied a fair hearing. The parties may also address whether and to what extent Murray should be sanctioned if he is found to have committed the alleged violations.

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.

August 29, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20534 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58434; File No. SR–OPRA–2008–02]

Options Price Reporting Authority; Order Approving an Amendment, as Modified by Amendment No. 1 Thereto, to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend OPRA's Vendor Agreement and Related Documents and To Adopt a New Policy

August 27, 2008.

I. Introduction

On May 30, 2008, the Options Price Reporting Authority (''OPRA'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan'').[3] On July 1, 2008, OPRA submitted Amendment No. 1 to the proposed amendment to the OPRA Plan. The proposed OPRA Plan amendment, as modified by Amendment No. 1, would modify OPRA's Vendor Agreement in several respects, including revising OPRA's definition of the term ''Nonprofessional.'' In connection with the revision of the term ''Nonprofessional,'' the proposed OPRA Plan amendment would also amend OPRA's ''Electronic Form of Subscriber Agreement'' and ''Hardcopy Form of Subscriber Agreement'' and adopt a new policy. The proposed OPRA Plan amendment, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 22, 2008.[4] The Commission received no comment letters in response to the Notice.

This order approves the proposed OPRA Plan amendment, as modified by Amendment No. 1.

II. Description of the Proposal

The proposed Amendment to OPRA's Vendor Agreement has several purposes.

A. Section 5: Definition of ''Nonprofessional''; Revision of forms of Subscriber Agreement; and New Policy

OPRA proposes to revise its definition of the term ''Nonprofessional.''[5] OPRA's current definition of the term ''Nonprofessional'' specifies that a person must be an ''individual'' in order to qualify as a Nonprofessional. OPRA has concluded that this aspect of the definition should be revised to state that a ''legal person'' may qualify as a Nonprofessional if the legal person is either an individual (a ''natural person'') or a ''qualifying trust.''[6]

The Addendum for Nonprofessionals that is attached to OPRA's form of Subscriber Agreement currently states that a person must use OPRA Data ''solely in connection with [the person's] individual personal investment activities'' in order to qualify as a Nonprofessional. OPRA has concluded that this language also should be revised to clarify that a natural person may qualify as a Nonprofessional if the person uses OPRA Data for the person's own benefit and for the benefit of other members of the person's immediate family and qualifying trusts of which the person is the trustee or custodian, and to include a parallel statement with respect to qualifying trusts to the effect that a qualifying trust may constitute a Nonprofessional only if the trust uses OPRA Data only for the benefit of the trust.[7]

B. Section 14: Reporting and Record Keeping Requirements

OPRA also proposes clarifying changes to four provisions in Section 14 of the Vendor Agreement, which describes the reports and record keeping that OPRA requires of Vendors. Specifically, the revised language makes clear that: (1) Pursuant to paragraph 14(a), OPRA requires only summary information on a monthly basis with respect to Subscribers that have entered into Subscriber Agreements with the Vendor; (2) a Vendor's reports to OPRA pursuant to paragraph 14(a) are to be provided electronically in a form reasonably satisfactory to OPRA; (3) whereas reports made pursuant to paragraph 14(a) may contain summary information with respect to Subscribers that have entered into Subscriber Agreements with the Vendor, reports made pursuant to paragraph 14(b) must include all information in the Vendor's list of Subscribers described in the first sentence of paragraph 14(a); (4) pursuant to 14(c)(3), a Vendor is not required to retain hardcopy originals of signed hardcopy Subscriber Agreements and may instead retain copies, either in hardcopy form or in electronic form, provided that copies that are maintained electronically are maintained in a ''non-rewriteable, non-eraseable format;''[8] and (5) a Vendor is required to retain records with respect to its agreements with a Subscriber for at least three years after it discontinues furnishing OPRA Data to that Subscriber, and requires a Vendor to retain records with respect to the actual use of OPRA Data for at least three years after the records are created.

C. Section 19: Provisions for Modifying the Vendor Agreement

OPRA is proposing to modify the language in paragraph 19(a) so that it clearly states that, if OPRA wishes to use paragraph 19(a) to implement a change in the Vendor Agreement after complying with the applicable requirements of the Act, OPRA must furnish written notice of the change to the Vendor, following which the Vendor need not ''opt in'' to the change in order to maintain its status as a Vendor, but may ''opt out'' of the change by terminating its Vendor Agreement if it is unwilling to accept the change. The revised paragraph makes clear that, if a Vendor timely gives notice of termination of its Vendor Agreement following its receipt of notice of a modification of the Vendor Agreement, the unmodified Vendor Agreement will constitute the agreement between the

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SEC Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com*.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The seven participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, the NASDAQ Stock Market LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

[4] *See* Securities Exchange Act Release No. 58173 (July 16, 2008), 73 FR 42631 (''Notice'').

[5] The definition currently appears in Section 5 of OPRA's Vendor Agreement and in OPRA's ''Electronic Form of Subscriber Agreement'' and ''Hardcopy Form of Subscriber Agreement.'' These two forms are Attachments B–1 and B–2 to OPRA's form of Vendor Agreement. OPRA's form of Vendor Agreement and its forms of Subscriber Agreements are available on OPRA's Web site, *http://www.opradata.com*. OPRA is proposing changes to Section 5 of its form of Vendor Agreement and in its Electronic Form of Subscriber Agreement and Hardcopy Form of Subscriber Agreement to implement the revised definition.

[6] The term ''qualifying trust'' is proposed to be defined essentially to refer to a trust established for the benefit of one or more members of the trustee's immediate family.

[7] OPRA is also proposing to adopt a new policy entitled ''Policy with Respect to Definition of the Term 'Nonprofessional.' ''

[8] This phrase is used in Rule 17a–4(f)(2)(ii)(A), 17 CFR 240.17a–4(f)(2)(ii)(A). Rule 17a–4(f) describes the circumstances in which brokers and dealers may retain certain records in electronic form.

Vendor and OPRA until the effective date of the Vendor's termination.[9]

D. Section 21: ''Assignment'' Provision

Section 21 of the Vendor Agreement currently states that the Vendor may not assign the Vendor Agreement without the consent of OPRA ''except to a successor corporation upon merger or consolidation of Vendor, or to a corporation acquiring all or substantially all of the property, assets and business of Vendor.'' OPRA is proposing to modify that language to accommodate other business entities in addition to corporations.

III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder.[10] Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act[11] and Rule 608 thereunder[12] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system.

The Commission notes that OPRA's proposed changes to the definition of the term ''Nonprofessional'' are designed to add clarity to the definition and better align the definition language with Vendors' and Subscribers' current understanding of the term. In addition, the Commission notes that OPRA's proposed changes to Sections 14, 19, and 21 are designed to add clarity and specificity to these provisions. The Commission believes that the proposed OPRA Plan amendment should help to assure the availability of information with respect to quotations and transactions in listed options and would thereby further one of the principal objectives for a national market system set forth in Section 11A(a)(1)(C)(iii) of the Act. Therefore, the Commission believes that OPRA's proposal is consistent with Section 11A of the Act[13] and Rule 608 thereunder.[14]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[15] and Rule 608 thereunder,[16] that the proposed OPRA Plan amendment (SR–OPRA–2008–02), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20469 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

[9] OPRA also proposes to delete current paragraph 19(b) (modifications relating Electronic Subscriber Agreement) and paragraph 19(c).

[10] In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 242.608.

[15] 15 U.S.C. 78k–1.

[16] 17 CFR 242.608.

[17] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58425; File No. SR–CBOE–2008–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to the Demutualization of Chicago Board Options Exchange, Incorporated

August 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 21, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is filing this proposed rule change in connection with its plan to restructure from a Delaware non-stock corporation to a Delaware stock corporation that will be a wholly owned subsidiary of CBOE Holdings, Inc. (''CBOE Holdings''), a holding company organized as a Delaware stock corporation. As part of this Restructuring Transaction, a Certificate of Incorporation and Bylaws will be adopted for CBOE Holdings.[3] In addition, the Exchange's Certificate of Incorporation and Constitution will be replaced with a new Certificate of Incorporation and Bylaws as a result of the Restructuring Transaction. Finally, the Exchange's Rules will be amended to address, among other things, trading access to the Exchange after the Restructuring Transaction.[4]

The text of the proposed Certificate of Incorporation of CBOE Holdings, the proposed Bylaws of CBOE Holdings, the proposed Certificate of Incorporation of the Exchange, the proposed Bylaws of the Exchange, the proposed amendments to the Rules of the Exchange, the proposed Voting Agreement between CBOE Holdings and the Exchange, and the proposed deletion of the Constitution of the Exchange is available on CBOE's Web site (*http://www.cboe.org/Legal*), at CBOE's Office of the Secretary, 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, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

(1) The Restructuring Transaction

CBOE is filing this proposed rule change in connection with its plan to restructure from a Delaware non-stock corporation owned by its members to a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Restructuring Transaction'' is defined in proposed CBOE Rule 1.1(hhh) as ''the restructuring of the Exchange from a non-stock corporation to a stock corporation and wholly owned subsidiary of CBOE Holdings, Inc.''

[4] The substance of the proposed rule change and its filing under Section 19(b)(2) of the Exchange Act (15 U.S.C. 78s(b)(2)), and Rule 19b–4 thereunder (CFR 240.19b–4), have been approved by the Board of Directors of the Exchange. The Exchange must obtain, but has not yet obtained, formal approval from the Board of Directors of the Exchange, as well as approval from the membership, for the changes set forth in this proposed rule change. Once it has obtained those approvals, the Exchange plans to file a technical amendment to this proposed rule change to reflect those approvals. Once those approvals are obtained, no further action by the Exchange in connection with this proposed rule change will be required.

Delaware stock corporation that will be a wholly owned subsidiary of CBOE Holdings, a holding company organized as a Delaware stock corporation. After the Restructuring Transaction, the owners of membership interests will become stockholders of CBOE Holdings through the conversion of their memberships into shares of common stock of CBOE Holdings. CBOE Holdings will hold all of the outstanding common stock of CBOE. CBOE will continue to function as a self-regulatory organization (''SRO'') and to operate its exchange business and facilities.

The Restructuring Transaction will be completed through the following steps:

- The creation of CBOE Holdings as a first-tier, Delaware stock, for-profit subsidiary corporation of CBOE; and the creation of CBOE Merger Sub, Incorporated as a second-tier, Delaware stock, for-profit subsidiary corporation of CBOE (CBOE Merger Sub will be a first-tier subsidiary of CBOE Holdings).[5]
- Pursuant to the Agreement and Plan of Merger to be entered into in the future, CBOE Merger Sub, Incorporated will merge with and into CBOE, with CBOE surviving the merger as a Delaware stock, for-profit corporation, which is referred to as the ''Merger.''
- Upon the effectiveness of the Merger, the outstanding stock of CBOE Merger Sub, Incorporated will be converted into common stock of CBOE, the memberships in CBOE existing on the date of the Restructuring Transaction will be converted into Class A common stock of CBOE Holdings (described below) and the CBOE Holdings common stock held by CBOE will be cancelled. As a result, CBOE Holdings will become the sole stockholder of CBOE and will be entitled to the exclusive right to receive all dividends and distributions, including proceeds upon liquidation, from CBOE and all associated voting rights.
- Immediately following the Merger, CBOE will dividend up to CBOE Holdings all of the shares or interests CBOE owns in its subsidiaries (CBOE Futures Exchange, LLC, Chicago Options Exchange Building Corporation, CBOE, LLC, CBOE II, LLC, DerivaTech Corporation, Market Data Express, LLC and The Options Exchange, Incorporated) other than CBOE Stock Exchange, LLC, making them first-tier, wholly-owned subsidiaries of CBOE Holdings.[6] CBOE Stock Exchange, LLC (''CBSX'') will remain a facility of CBOE in which CBOE holds a 50% interest.[7] CBSX is an equity trading facility of CBOE.

As part of the Restructuring Transaction, each membership in CBOE existing on the date of the Restructuring Transaction will be converted into a certain number of shares of Class A common stock of CBOE Holdings, divided by thirds into shares of Series A–1 common stock, Series A–2 common stock and Series A–3 common stock.[8] As a result, the owners of CBOE memberships outstanding immediately prior to the Restructuring Transaction will own shares of Class A common stock of CBOE Holdings immediately following the Restructuring Transaction.

The Class A common stock of CBOE Holdings will represent an equity ownership interest in CBOE Holdings and will have traditional features of common stock, including equal per share dividend, voting and liquidation rights. This stock, however, will not provide its holders with physical or electronic access to CBOE and its trading facilities. Following the Restructuring Transaction, physical and electronic access to CBOE and its trading facilities will be available to individuals and organizations that have obtained a Trading Permit from CBOE. Trading Permits are described in more detail below.

(2) Reasons for the Restructuring Transaction

CBOE believes that changing its focus to that of a for-profit business, along with modifying its corporate and governance structures to be more like those of other for-profit businesses, will provide CBOE with greater flexibility to respond to the demands of a rapidly changing business environment. In addition, by being structured as a stock, for-profit corporation, CBOE will be able to pursue strategic opportunities to engage in business combinations and joint ventures with other organizations and to access capital markets in ways that are not available to non-stock, membership corporations. CBOE believes that the Restructuring Transaction will move it one step closer to achieving its key objectives of providing its owners a more liquid investment and creating a framework for a possible future public offering of CBOE Holdings Common Stock.

CBOE also believes, among other things, that the restructuring of the Exchange will enable it to enhance its competitiveness with other options exchanges while preserving its ability to provide trading benefits and opportunities to persons with trading access to the Exchange.

(3) Paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation and the Settlement of Litigation

In connection with the Merger, the Exchange's Certificate of Incorporation and Constitution will be replaced by a new Certificate of Incorporation and Bylaws. While the content of the Exchange's new Certificate of Incorporation and Bylaws will be similar to the content of the Exchange's old Certificate of Incorporation and Constitution, the new Certificate of Incorporation will not contain, among other things, paragraph (b) of Article Fifth of the CBOE Certificate of

[5] CBOE Holdings and CBOE Merger Sub have already been created.

[6] These entities engage in the following activities: CBOE Futures Exchange, LLC operates an electronic futures exchange; Chicago Options Exchange Building Corporation owns the building in which CBOE operates; CBOE, LLC holds a 24.01% interest in OneChicago, LLC, a security futures exchange; CBOE II, LLC recently sold its interest in HedgeStreet, Inc., a derivatives market regulated by the Commodity Futures Trading Commission; DerivaTech Corporation owns certain educational software; Market Data Express, LLC distributes various types of market data; and The Options Exchange, Incorporated currently has no assets or activities. CBOE is in the process of establishing CBOE Execution Services, LLC as a broker-dealer. CBOE Execution Services, LLC will perform various functions in that capacity and will be a first-tier, wholly-owned subsidiary of CBOE Holdings immediately following the Merger.

[7] The remaining 50% interest in CBSX currently is owned by five registered broker-dealers.

[8] As of the effective time of the Restructuring Transaction, CBOE Holdings will be authorized to issue (i) a certain number of shares of unrestricted common stock, $0.01 par value per share, (ii) a certain number of shares of Class A common stock, $0.01 par value per share, initially divided into three series of restricted Class A common stock, designated Series A–1, A–2 and A–3, (iii) a certain number of shares of Class B non-voting common stock, $0.01 par value per share, initially divided into three series of Class B non-voting common stock, designated Series B–1, B–2 and B–3, and (iv) up to 20,000,000 shares of preferred stock, $0.01 par value per share. The unrestricted common stock and the Class A common stock will have the same rights and privileges, except the Class A common stock will be subject to certain transfer restrictions. The unrestricted common stock will be freely transferable. The three series of Class A common stock will be identical, except that the transfer restrictions associated with each series will be of a different duration. The three series of Class B non-voting common stock will be identical, and will have no voting privileges or rights except in certain limited circumstances. The three series of Class B non-voting common stock will convert into Class A common stock upon the public offering of CBOE Holdings Common Stock (defined for purposes of this rule filing as the unrestricted common stock, the Class A common stock and the Class B non-voting common stock). The Class B non-voting common stock will be issued as part of a settlement of certain litigation, which is discussed below. CBOE Holdings will have the ability to issue preferred stock and unrestricted common stock, including in connection with a public offering of shares of stock to investors who were not members of CBOE prior to the Restructuring Transaction and are not holders of Trading Permits in CBOE following the Restructuring Transaction. CBOE Holdings has no current intention to issue any shares of its preferred stock.

Incorporation (''Article Fifth(b)'').[9] Article Fifth(b) provided the right for full members of The Board of Trade of the City of Chicago, Inc. (''CBOT'') to become members of CBOE without having to separately purchase or lease a membership.[10]

Article Fifth(b) contains a provision that provides that no amendment may be made to it without the prior approval of not less than 80% of (i) the regular members of the Exchange admitted pursuant to Article Fifth(b) and (ii) the regular members of the Exchange admitted other than pursuant to Article Fifth(b), each such category of members voting as a separate class. CBOE has received a legal opinion from its Delaware counsel that under Delaware law because the Restructuring Transaction is structured as a merger, this provision of Article Fifth(b) would not be triggered, and that the Merger and associated amendments to the Exchange's Certificate of Incorporation and Constitution could be effected through a simple majority vote of the members.

In addition, issues related to Article Fifth(b) are subject to litigation in Delaware state court and the U.S. Court of Appeals for the District of Columbia Circuit (''DC Circuit'').[11] A settlement has been reached with respect to this litigation that remains subject to various approvals.[12] As a result of the settlement, the trading access of persons who are Temporary Members under Interpretation and Policy .02 of CBOE Rule 3.19 will be preserved as further described below. In addition, the class members in the litigation will receive cash and Class B non-voting common stock that will convert into Class A common stock upon the public offering of CBOE Holdings Common Stock.[13]

(4) Request for Commission Approval Under Section 15.16 of the CBSX Operating Agreement

Under the CBSX Operating Agreement, CBOE is defined as one of the ''Owners'' of CBSX. Section 15.16 of the CBSX Operating Agreement provides that in the event that a person acquires a 25% or greater interest in an Owner that owns a 20% or greater interest in CBSX, that person must execute an amendment to the Operating Agreement in which that person agrees to be a party to the Operating Agreement and to abide by all of the provisions of the Operating Agreement. Section 15.16 also provides that Commission approval under Section 19 of the Exchange Act is required in connection with such an amendment to the Operating Agreement.[14] Because CBOE owns a 50% interest in CBSX, the establishment of CBOE Holdings as the sole shareholder of CBOE would trigger this Commission approval requirement. Consistent with this requirement in Section 15.16 of the CBSX Operating Agreement, CBOE is requesting as part of this proposed rule change that the Commission provide such approval.

(5) Summary of the Proposed Rule Change

Following the Restructuring Transaction, the Exchange's new Certificate of Incorporation and Bylaws will be similar to the current Certificate of Incorporation and Constitution, except they will reflect CBOE's new structure as a for-profit stock corporation wholly-owned by CBOE Holdings. In this regard, they will be modified to, among other things, streamline governance and incorporate provisions required by the SEC in the case of for-profit exchanges. The Exchange also proposes to adopt a Certificate of Incorporation and Bylaws for CBOE Holdings that will address, among other things, the operation of the Exchange as an SRO in this new structure.[15] The Rules of the Exchange also will be amended to reflect the use of Trading Permits to access the Exchange and its trading facilities and to make certain conforming changes.[16] These rule changes are discussed below.

(A) CBOE Holdings

As mentioned above, CBOE Holdings will be the parent company and sole shareholder of CBOE. The Certificate of Incorporation and the Bylaws of CBOE Holdings will govern the activities of CBOE Holdings.

(i) CBOE Holdings Board of Directors

After the Restructuring Transaction, the business and affairs of CBOE Holdings will be managed by or under the direction of its Board of Directors (''CBOE Holdings Board''). The CBOE Holdings Board will consist of between 11 and 15 directors, and except with respect to the initial CBOE Holdings Board, will be fixed by the CBOE Holdings Board from time to time.[17] After the Restructuring Transaction, the initial CBOE Holdings Board will have 13 directors who will consist of the CBOE Holdings' Chief Executive Officer and 12 other directors.[18] That initial CBOE Holdings Board will be selected by the Board of Directors of the Exchange existing prior to the Restructuring Transaction (''Prior CBOE Board'') or a committee thereof, and the composition requirements for the CBOE Holdings Board will be satisfied in connection with the selection of directors for that initial CBOE Holdings Board. At all times no less than two-thirds of the directors of CBOE Holdings will satisfy the independence requirements contained in the listing standards of the New York Stock Exchange (''NYSE'') and the independence requirements adopted by the CBOE Holdings Board, as may be modified and amended from time to time.[19]

[9] As a result of this change, the Exchange is proposing to delete CBOE Rule 3.16, which addresses certain issues related to Article Fifth(b).

[10] On January 15, 2008, the Securities and Exchange Commission (''SEC'' or ''Commission'') approved an interpretation of Article Fifth(b) (''Article Fifth(b) Interpretation'') that addressed the impact of the acquisition of CBOT by Chicago Mercantile Exchange Holdings Inc. (''CME/CBOT Transaction'') on the eligibility of persons to become or remain members of CBOE (''exerciser members'') pursuant to Article Fifth(b) (the right provided under this provision is sometimes referred to as the ''exercise right''). *See* Securities Exchange Act Release No. 57159 (Jan. 15, 2008), 73 FR 3769 (Jan. 22, 2008) (order approving File No. SR–CBOE–2006–106). Under the Article Fifth(b) Interpretation, the consummation of the CME/CBOT Transaction resulted in no person any longer qualifying as a member of the CBOT within the meaning of Article Fifth(b) and therefore resulted in the elimination of any person's eligibility to qualify thereafter to become or remain an exerciser member of the Exchange.

[11] In addition to the Delaware litigation, the Commission's approval order of the Article Fifth(b) Interpretation has been appealed to the DC Circuit.

[12] Among other things, the appeal of the Commission's approval order of the Article Fifth(b) Interpretation to the DC Circuit would be withdrawn as part of the settlement. CBOE will keep Commission staff apprised regarding the status of the settlement and the legal proceedings related to the settlement.

[13] In the event of such a public offering, the Class A common stock will be subject to certain transfer restrictions as noted above.

[14] 15 U.S.C. 78s.

[15] While certain provisions of the Certificate of Incorporation and Bylaws for CBOE Holdings are not related to the operation of the Exchange, for so long as CBOE Holdings controls CBOE, before any amendment, alteration or repeal of any provision of the Certificate of Incorporation and Bylaws of CBOE Holdings becomes effective, such amendment, alteration or repeal will be submitted to the Board of Directors of CBOE, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Commission, then such amendment, alteration or repeal will not become effective until filed with or filed with and approved by the Commission, as the case may be. *See* proposed Article Eleventh of the CBOE Holdings Certificate of Incorporation and proposed Article 10.2 of the CBOE Holdings Bylaws.

[16] The Exchange is not proposing any significant change to its existing operational and trading structure in connection with the demutualization.

[17] *See* proposed Article Seventh(b) of the CBOE Holdings Certificate of Incorporation and proposed Article 3.2 of the CBOE Holdings Bylaws.

[18] *See* proposed Article 3.2 of the CBOE Holdings Bylaws.

[19] *See* proposed Article 3.3 of the CBOE Holdings Bylaws. At the time this rule filing was submitted to the Commission, the requirements to qualify as an ''independent director'' under the NYSE's listing

The CBOE Holdings Board will appoint one of the directors on the CBOE Holdings Board to serve as Chairman of the CBOE Holdings Board.[20] The CBOE Holdings Bylaws do not restrict the Chief Executive Officer of CBOE Holdings from serving in this role.[21] The CBOE Holdings Board also may appoint an independent director to serve as Lead Director, who will perform such duties and possess such powers as the CBOE Holdings Board may from time to time prescribe.[22] The CBOE Holdings Board will be a classified board with staggered terms of office, consisting of two classes of directors, each of which will serve for two-year terms.[23] There is no limit on the number of terms a director may serve on the CBOE Holdings Board.

Except with respect to the initial CBOE Holdings Board, the CBOE Holdings Board or a committee thereof each year will nominate candidates for the class of directors standing for election at the CBOE Holdings annual meeting of shareholders.[24] In this regard, the Nominating and Governance Committee, which is described below, will nominate candidates for the CBOE Holdings Board. Each holder of CBOE Holdings voting stock will be entitled to one vote for each share of voting stock he or she holds, except as otherwise provided by the General Corporation Law of the State of Delaware (''DGCL'') or the Certificate of Incorporation or Bylaws of CBOE Holdings.[25] At each annual meeting of the shareholders of CBOE Holdings at which a quorum is present, the individuals receiving a plurality of the votes cast will be elected directors of CBOE Holdings.[26]

(ii) Committees of CBOE Holdings

CBOE Holdings will have an Executive Committee, an Audit Committee, a Compensation Committee, a Nominating and Governance Committee, as well as such other committees that the CBOE Holdings Board establishes.[27] The Nominating and Governance Committee will consist of at least seven directors, all of whom will be Independent Directors and be recommended by the Nominating and Governance Committee for approval by the CBOE Holdings Board.[28] The initial Nominating and Governance Committee after the Restructuring Transaction will be selected by the Prior CBOE Board or a committee thereof, and the composition requirements for the Nominating and Governance Committee will be satisfied in connection with the selection of members of the initial Nominating and Governance Committee. Members of the Executive, Audit, and Compensation Committees of CBOE Holdings will be recommended by the Nominating and Governance Committee for approval by the CBOE Holdings Board.[29]

The Executive Committee will have and may exercise all the powers and authority of the CBOE Holdings Board in the management of the business and affairs of CBOE Holdings, except it will not have the power or authority of the CBOE Holdings Board in reference to, among other things, amending the CBOE Holdings Certificate of Incorporation, adopting an agreement of merger or consolidation, approving the sale, lease or exchange of all or substantially all of the CBOE Holdings' property and assets, or approving the dissolution of CBOE Holdings or a revocation of a dissolution.[30] The Audit, Compensation, and Nominating and Governance Committees will have such duties and may exercise such authority as may be prescribed by the CBOE Holdings Board and their respective Charters as adopted by resolution of the CBOE Holdings Board.[31]

(iii) Officers of CBOE Holdings

The officers of CBOE Holdings will be the Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice-Presidents (the number thereof to be determined by the CBOE Holdings Board), a Secretary, a Treasurer, and such other officers as the CBOE Holdings Board may determine, including an Assistant Secretary or Assistant Treasurer.[32] The CBOE Holdings Board by an affirmative vote of the majority of the board will appoint the Chief Executive Officer of CBOE Holdings, who will have general charge and supervision of the business of the CBOE Holdings.[33] In general, the other officers of CBOE Holdings will have the duties or powers or both set out in the CBOE Holdings Bylaws, as well as such other duties or powers or both as the CBOE Holdings Board or the Chief Executive Officer may from time to time prescribe.[34]

(iv) Shareholder Restrictions

In addition to the restrictions on the ability of certain CBOE Holdings stockholders to transfer their shares prior to and after an initial public offering if such an offering were to occur, the Certificate of Incorporation of CBOE Holdings places certain ownership and voting limits on the holders of CBOE Holdings stock and their Related Persons.[35] These restrictions are intended to address the possibility that a person holding a controlling interest in an SRO could use that interest to affect the SRO's regulatory responsibilities under the

standards were found in Sections 303A.01 and 303A.02 of the NYSE's Listed Company Manual.

[20] *See* proposed Article 3.6 of the CBOE Holdings Bylaws.

[21] *See* proposed Article 5.1 of the CBOE Holdings Bylaws.

[22] *See* proposed Article 3.7 of the CBOE Holdings Bylaws.

[23] *See* proposed Article 3.2 of the CBOE Holdings Bylaws. With regard to the initial CBOE Holdings Board, the initial term of the Class I directors will end with the first annual stockholders meeting to be held by CBOE Holdings following the Restructuring Transaction, and the initial term of the Class II directors will end with the second annual stockholders meeting following the Restructuring Transaction. The CBOE Holdings Board is authorized to assign members of the CBOE Holdings Board already in office to such classes at the time the classification becomes effective.

[24] *See* proposed Article 2.11 of the CBOE Holdings Bylaws. Subject to certain conditions, stockholders also have the right under this provision to nominate persons for the CBOE Holdings Board.

[25] *See* proposed Article 2.8 of the CBOE Holdings Bylaws.

[26] *See* proposed Article 2.10 of the CBOE Holdings Bylaws. Except as otherwise provided by law or the Certificate of Incorporation or Bylaws of CBOE Holdings, the holders of a majority in voting power of the shares of the capital stock of CBOE Holdings issued and outstanding and entitled to vote at the meeting (after taking into account the effect of any reduction of the number of shares entitled to vote as a result of the voting limitations imposed by Article Sixth of the Certificate of Incorporation of CBOE Holdings, if any), present in person or represented by proxy, will constitute a quorum for the transaction of business. *See* proposed Article 2.6 of the CBOE Holdings Bylaws. The voting limitations in Article Sixth are discussed below.

[27] *See* proposed Article 4.1 of the CBOE Holdings Bylaws. The CBOE Holdings Board will designate the members of these other committees and may designate a Chairman and a Vice-Chairman thereof.

[28] *See* proposed Article 4.5 of the CBOE Holdings Bylaws.

[29] *See* proposed Articles 4.2, 4.3 and 4.4 of the CBOE Holdings Bylaws.

[30] *See* proposed Article 4.2 of the CBOE Holdings Bylaws.

[31] *See* proposed Articles 4.3, 4.4 and 4.5 of the CBOE Holdings Bylaws.

[32] *See* proposed Article 5.1 of the CBOE Holdings Bylaws. A ''Trading Permit Holder'' is defined in Section 1.1(f) of the Bylaws of the Exchange as: ''any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. If a Trading Permit Holder is an individual, the Trading Permit Holder may also be referred to an 'individual Trading Permit Holder.' If a Trading Permit Holder is not an individual, the Trading Permit Holder may also be referred to as a 'TPH organization.' A Trading Permit Holder is a 'member' solely for purposes of the Act; however, one's status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange.''

[33] *See* proposed Articles 5.1 and 5.2 of the CBOE Holdings Bylaws.

[34] *See* proposed Articles 5.3, 5.4, 5.5, 5.6 and 5.7 of the CBOE Holdings Bylaws.

[35] The term ''Related Person'' is defined in proposed Article Fifth(a)(ix) of the CBOE Holdings Certificate of Incorporation and includes, among other things, persons associated with a Trading Permit Holder.

Exchange Act.[36] In particular, these restrictions provide that:

Ownership

• No person (either alone or together with its Related Persons) may beneficially own shares of stock representing in the aggregate more than 10% of the total outstanding shares of CBOE Holdings stock; provided, that, in the event a public offering of common stock is completed, the ownership percentage that a person is permitted to beneficially own will increase from 10% to 20% of the total outstanding shares of CBOE Holdings stock;[37] and

• In the event that a person, either alone or together with its Related Persons, beneficially owns shares of stock representing more than 10% of the outstanding shares of stock (or, in the event that a public offering of common stock has been completed, 20% of the outstanding shares of stock), such person and its Related Persons will be obligated to sell promptly, and CBOE Holdings will be obligated to redeem promptly, at a price equal to the par value of such shares of stock and to the extent that funds are legally available for such redemption, that number of shares of stock necessary so that such person, together with its Related Persons, will beneficially own shares of stock representing in the aggregate no more than 10% of the outstanding shares of stock (or, in the event that a public offering of common stock has been completed, 20% of the outstanding shares of stock), after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.[38]

Voting

• No person (either alone or together with its Related Persons) will be entitled to vote or cause the voting of shares of stock beneficially owned by that person or those Related Persons to the extent that those shares would represent in the aggregate more than 10% of the total number of votes entitled to be cast on any matter, and no person (either alone or together with its Related Persons) will be entitled to vote more than 10% of the total number of votes entitled to be cast on any matter by virtue of agreements entered into by that person or those Related Persons with other persons not to vote shares of outstanding stock; provided, that, in the event a public offering of common stock is completed, the voting percentage that any person is permitted to control, whether through beneficial ownership or other agreement, will increase from 10% to 20% of the total number of votes entitled to be cast on any matter;[39] and

• In the event that a person, either alone or together with its Related Persons, is entitled to vote or cause the voting of shares representing in the aggregate more than 10% (or, in the event that a public offering of common stock has been completed, 20%) of the total number of votes entitled to be cast on any matter (including if it and its Related Persons possess this voting power by virtue of agreements entered into with other persons not to vote shares of stock), then such person, either alone or together with its Related Persons, will not be entitled to vote or cause the voting of these shares of stock to the extent that such shares represent in the aggregate more than 10% (or, in the event that a public offering of common stock has been completed, 20%) of the total number of votes entitled to be cast on any matter, and any such votes purported to be cast in excess of this percentage will be disregarded.[40]

The CBOE Holdings Board of Directors may waive the provisions regarding ownership and voting limits by a resolution expressly permitting ownership or voting rights in excess of such limits (which resolution must be filed with and approved by the SEC prior to being effective), subject to a determination of the Board that:[41]

• The acquisition of beneficial ownership in excess of the ownership limits or the exercise of voting rights in excess of the voting limits will not impair the ability of CBOE to discharge its responsibilities under the Exchange Act and the rules and regulations under the Exchange Act and is otherwise in the best interests of CBOE Holdings and its stockholders and CBOE;

• The acquisition of beneficial ownership in excess of the ownership limits or the exercise of voting rights in excess of the voting limits will not impair the SEC's ability to enforce the Exchange Act;

• Neither the person obtaining the waiver nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) if such person is seeking to obtain a waiver above the applicable ownership or voting percentage level;[42] and

• For so long as CBOE Holdings directly or indirectly controls CBOE, neither the person obtaining the waiver nor any of its Related Persons is a Trading Permit Holder if such person is seeking to obtain a waiver above the applicable ownership or voting percentage level.

In making these determinations, the CBOE Holdings Board may impose conditions and restrictions on the relevant stockholder and its Related Persons that it deems necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of CBOE Holdings.[43]

The CBOE Holdings Certificate of Incorporation also provides that the CBOE Holdings Board has the right to require any person and its Related Persons that the Board reasonably believes (i) to be subject to the voting or ownership restrictions summarized above, (ii) to beneficially own shares of CBOE Holdings stock entitled to vote on any matter in excess of the ownership restrictions discussed above, or (iii) to beneficially own an aggregate of 5% or more of the then outstanding shares of CBOE Holdings stock entitled to vote on any matter, which ownership has not been reported to CBOE Holdings, to provide to CBOE Holdings complete information as to all shares of the stock that such stockholder beneficially owns,

[36] In 2004, the Commission proposed rules that were designed to address conflicts of interest relating to for-profit SROs. *See, e.g.*, Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71126 (Dec. 8, 2004).

[37] *See* proposed Article Sixth(b) of the CBOE Holdings Certificate of Incorporation.

[38] *See* proposed Article Sixth(b) of the CBOE Holdings Certificate of Incorporation. If and to the extent that shares of CBOE Holdings stock beneficially owned by any person or its Related Persons are held of record by any other person, this provision will be enforced against such record owner by requiring the redemption of shares of CBOE Holdings stock held by such record owner in a manner that will accomplish the ownership limitation applicable to such person and its Related Persons.

[39] *See* proposed Article Sixth(a) of the CBOE Holdings Certificate of Incorporation. The voting limitation does not apply to a solicitation of a revocable proxy by any CBOE Holdings stockholder on behalf of CBOE Holdings or by directors or officers of CBOE Holdings on behalf of CBOE Holdings or to a solicitation of a revocable proxy by a stockholder in accordance with Regulation 14A under the Exchange Act. 17 CFR 240.14A. This exception, however, would not apply to a solicitation by a stockholder pursuant to Rule 14a–2(b)(2) under the Exchange Act, which permits a solicitation made otherwise than on behalf of CBOE Holdings where the total number of persons solicited is not more than 10.

[40] *See* proposed Article Sixth(a) of the CBOE Holdings Certificate of Incorporation. If and to the extent that shares of CBOE Holdings stock beneficially owned by any person or its Related Persons are held of record by any other person, this provision will be enforced against such record owner by limiting the votes entitled to be cast by such record owner in a manner that will accomplish the voting limitation applicable to such person and its Related Persons.

[41] *See* proposed Articles Sixth(a) and (b) of the CBOE Holdings Certificate of Incorporation.

[42] 15 U.S.C. 78c(a)(39).

[43] *See* proposed Articles Sixth(a) and (b) of the CBOE Holdings Certificate of Incorporation.

as well as any other information relating to the applicability to such stockholder of the voting and ownership requirements outlined above as may reasonably be requested.[44]

CBOE has received a legal opinion that the foregoing ownership and voting rights limitations, as well as the provisions providing for the redemption of shares held by a person (either alone or together with its Related Persons) in excess of the ownership limitation, are valid under Delaware law.

(v) Self-Regulatory Function and Oversight

The CBOE Holdings Certificate of Incorporation contains various provisions designed to protect the independence of the self-regulatory function of CBOE and to make clear the Commission's and CBOE's jurisdiction with respect to CBOE Holdings. For example, pursuant to the CBOE Holdings Certificate of Incorporation, for so long as CBOE Holdings controls CBOE, each officer, director and employee of CBOE Holdings must give due regard to the preservation of the independence of the self-regulatory function of CBOE and to its obligations under the Exchange Act.[45] In addition, these persons are specifically prohibited from taking any actions that they reasonably should have known would interfere with the effectuation of any decisions by the Board of Directors of CBOE (''CBOE Board'') relating to CBOE's regulatory functions, including disciplinary matters, or would adversely affect CBOE's ability to carry out its responsibilities under the Exchange Act.[46]

The CBOE Holdings Certificate of Incorporation also contains a specific requirement that to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of CBOE (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of CBOE that comes into the possession of CBOE Holdings will: (1) Not be made available to any persons other than to those officers, directors, employees and agents of CBOE Holdings that have a reasonable need to know the contents thereof; (2) be retained in confidence by CBOE Holdings and the officers, directors, employees and agents of CBOE Holdings; and (3) not be used for any commercial purposes.[47] The CBOE Holdings Certificate of Incorporation also provides that for so long as CBOE Holdings controls CBOE, the books, records, premises, officers, directors and employees of CBOE Holdings will be deemed to be the books, records, premises, officers, directors and employees of CBOE for purposes of and subject to oversight pursuant to the Act, but only to the extent that such books, records, premises, officers, directors and employees of CBOE Holdings relate to the exchange business of CBOE.[48]

Further, the CBOE Holdings Certificate of Incorporation provides that CBOE Holdings will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting such a position with CBOE Holdings, to consent in writing to the applicability to them of Article Fourteenth, Article Fifteenth and Sections (c) and (d) of Article Sixteenth of the CBOE Holdings Certificate of Incorporation, as applicable, with respect to their activities related to CBOE.[49] In addition, CBOE Holdings will take reasonable steps necessary to cause its agents, prior to accepting such a position with CBOE Holdings, to be subject to the provisions of Article Fourteenth, Article Fifteenth and Sections (c) and (d) of Article Sixteenth of the CBOE Holdings Certificate of Incorporation, as applicable, with respect to their activities related to CBOE.

The CBOE Holdings Certificate of Incorporation also provides that CBOE Holdings, its directors, officers, agents and employees, irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and CBOE, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, CBOE's activities.[50] Further, the Certificate of Incorporation provides that CBOE Holdings, its directors, officers, agents and employees, waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.[51]

In addition, the CBOE Holdings Certificate of Incorporation and Bylaws provide that, before any amendment or repeal of any provision of the Certificate of Incorporation and Bylaws of CBOE Holdings becomes effective, such amendment or repeal will be submitted to the Board of Directors of CBOE, and if such amendment or repeal must be filed with or filed with and approved by the Commission, then such amendment or repeal will not become effective until filed with or filed with and approved by the Commission, as the case may be.[52] The CBOE Holdings Certificate of Incorporation also contains a provision that requires each director of the Board of CBOE Holdings to take into consideration the effect that CBOE Holdings' actions would have on CBOE's ability to carry out its responsibilities under the Exchange Act.[53]

(B) CBOE

Following the demutualization, CBOE will become a Delaware for-profit stock corporation that will be wholly-owned by CBOE Holdings. CBOE will issue a total of 1,000 shares of common stock, all of which will be owned by CBOE Holdings immediately following the demutualization transaction.[54] CBOE, not CBOE Holdings, will continue to be the entity registered as a national securities exchange under Section 6 of the Exchange Act and, accordingly, CBOE will continue to be an SRO.[55] The proposed CBOE Certificate of Incorporation, Bylaws and Rules will govern the activities of CBOE. CBOE's

[44] *See* proposed Article Sixth(d) of the CBOE Holdings Certificate of Incorporation.

[45] *See* proposed Article Sixteenth(c) of the CBOE Holdings Certificate of Incorporation.

[46] *Id.*

[47] Notwithstanding this restriction, nothing in the CBOE Holdings Certificate of Incorporation will be interpreted so as to limit or impede the rights of the SEC or CBOE to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of CBOE Holdings to disclose such confidential information to the SEC or CBOE. *See* proposed Article Fifteenth of the CBOE Holdings Certificate of Incorporation.

[48] The books and records related to the exchange business of CBOE will be subject at all times to inspection and copying by the SEC and CBOE. *Id.* In addition, the CBOE Holdings Bylaws provide that the books of CBOE Holdings must be kept within the United States. *See* proposed Section 1.3 of the CBOE Holdings Bylaws.

[49] *See* proposed Article Sixteenth(b) of the CBOE Holdings Certificate of Incorporation.

[50] *See* proposed Article Fourteenth of the CBOE Holdings Certificate of Incorporation.

[51] *Id.*

[52] *See* proposed Article Eleventh of the CBOE Holdings Certificate of Incorporation and proposed Article 10.2 of the CBOE Holdings Bylaws.

[53] *See* proposed Article Sixteenth(d) of the CBOE Holdings Certificate of Incorporation.

[54] Any sale, transfer or assignment by CBOE Holdings of any shares of CBOE common stock will require an amendment to the proposed CBOE Certificate of Incorporation and consequently will be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act (15 U.S.C. 78s). *See* proposed Article Fourth of the CBOE Certificate of Incorporation.

[55] 15 U.S.C. 78f.

current Certificate of Incorporation, Constitution (which will be replaced by the proposed Bylaws) and Rules are proposed to be amended to reflect, among other things, CBOE's status as wholly-owned subsidiary of CBOE Holdings, its management by the CBOE Board and its designated officers, and its self-regulatory responsibilities under Section 6 of the Exchange Act.[56]

(i) CBOE Board of Directors

After the Restructuring Transaction, the business and affairs of CBOE will be managed by or under the direction of the CBOE Board. The CBOE Board will consist of between 11 and 15 directors, and except with respect to the initial board of 13 directors as discussed below, will be fixed by the CBOE Board from time to time.[57] After the Restructuring Transaction, the CBOE Board will be reduced from 23 directors to 13 directors. This initial CBOE Board will have 13 directors who will consist of the CBOE's Chief Executive Officer, seven Non-Industry Directors and five Industry Directors.[58] The initial CBOE Board will be selected by the Prior CBOE Board or a committee thereof, and the composition requirements for the CBOE Board will be satisfied in connection with the selection of directors for the initial CBOE Board. It is anticipated that the same individuals will be on the CBOE Holdings Board and the CBOE Board immediately following the Restructuring Transaction.

This initial CBOE Board will be smaller than the Prior CBOE Board and will have a majority of public directors (*i.e.*, Non-Industry Directors). In comparison, as indicated above, the Prior CBOE Board has 23 directors. Eleven of these directors are Public Directors,[59] two are At-Large Directors,[60] four are Floor Directors,[61] one is a Lessor Director,[62] four are Off-Floor Directors,[63] and one is the Chairman of the Board (who is also the Chief Executive Officer of the Exchange).[64] Thus, the Prior CBOE Board consists of eleven public directors, eleven directors from the industry, and the Chairman of the Board.[65]

After the Restructuring Transaction, the number of Non-Industry Directors and Industry Directors on the CBOE Board may be increased from time to time by resolution adopted by the CBOE Board, but in no event will the number of Industry Directors constitute less than 30% of the members of the CBOE Board and in no event will the number of Non-Industry Directors constitute less than a majority of the members of the CBOE Board.[66] In addition, at all times at least 20% of directors serving on the CBOE Board shall be Industry Directors nominated (or otherwise selected through the petition process) by the Industry-Director Subcommittee (directors selected through this process are referred to as ''Representative Directors'').[67] This nomination process is described below.

The CBOE Board will appoint one of the directors on the CBOE Board to serve as Chairman of the CBOE Board.[68] The CBOE Bylaws do not restrict the Chief Executive Officer of CBOE from serving in this role.[69] Each year following the annual election of the directors, the CBOE Board will select, from among the Industry Directors, a Vice Chairman of the CBOE Board to serve for a term of one year and until a successor is elected or appointed and qualified.[70] The CBOE Board also may appoint one of the Non-Industry Directors to serve as Lead Director, who will perform such duties and possess such powers as the CBOE Board may

[56] *Id.*

[57] *See* proposed Article Fifth(b) of the CBOE Certificate of Incorporation and proposed Section 3.1 of the CBOE Bylaws.

[58] *See* proposed Section 3.1 of the CBOE Bylaws. A ''Non-Industry Director'' is defined as a person who is not an Industry Director. An ''Industry Director'' is defined as any director who (i) is a holder of a Trading Permit or otherwise subject to regulation by the Exchange; (ii) is a broker-dealer or an officer, director or employee of a broker-dealer or has been in any such capacity within the prior three years; (iii) is, or was within the prior three years, associated with an entity that is affiliated with a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated; (iv) has a material ownership interest in a broker-dealer and has investments in broker-dealers that account for a material portion of the director's net worth; (v) has a consulting or employment relationship with or has provided professional services to the Exchange or any of its affiliates or has had such a relationship or has provided such services within the prior three years; or (vi) provides, or has provided within the prior three years, professional or consulting services to a broker-dealer, or to an entity with a 50% or greater ownership interest in a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, and the revenue from all such professional or consulting services accounts for a material portion of either the revenues received by the director or the revenues received by the director's firm or partnership. Notwithstanding the foregoing, a director will not be deemed to be an ''Industry Director'' solely because either (A) the person is or was within the prior three years an outside director of a broker-dealer or an outside director of an entity that is affiliated with a broker-dealer, provided that the broker-dealer is not a holder of a Trading Permit or otherwise subject to regulation by the Exchange, or (B) the person is or was within the prior three years associated with an entity that is affiliated with a broker-dealer whose revenues do not account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, provided that the broker-dealer is not a holder of a Trading Permit or otherwise subject to regulation by the Exchange. At all times, at least one Non-Industry Director will be a Non-Industry Director exclusive of the exceptions provided for in the immediately preceding sentence and will have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. For purposes of proposed Section 3.1 of the CBOE Bylaws, an ''outside director'' is a director of an entity who is not an employee or officer (or any person occupying a similar status or performing similar functions) of such entity. The CBOE Board or the Nominating and Governance Committee will make all of the foregoing materiality determinations. In addition, in determining under (iii), (vi) and (B) above whether a broker-dealer's revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, the revenues of the broker-dealer will be compared with the consolidated revenues of all of the entities affiliated with the broker-dealer as well as the broker-dealer (*i.e.*, all of the entities in the broker-dealer's corporate family, inclusive of the broker-dealer). A director will qualify as a Non-Industry Director only so long as such director meets the requirements for that position.

[59] *See* Section 6.1 of the current Constitution of the Exchange. A ''Public Director'' is a non-member who is not a broker-dealer or person affiliated with a broker-dealer.

[60] *Id.* For purposes of Class II of the Prior CBOE Board, an ''At-Large Director'' is a person who functions as a member in any recognized capacity either individually or on behalf of a member organization, who is a CBSX Permit holder or an executive officer of a CBSX Permit holder, or who is an Interim Trading Permit holder or executive officer of an Interim Trading Permit holder. For purposes of Class III of the Prior CBOE Board, an ''At-Large Director'' is a member who functions as a member in any recognized capacity either individually or on behalf of a member organization.

[61] *Id.* A ''Floor Director'' is a member who directly or indirectly owns and controls a membership and is primarily engaged in business on the floor of the Exchange in the capacity of a member.

[62] *Id.* The ''Lessor Director'' is a person who directly or indirectly owns and controls a membership with respect to which s/he acts solely as lessor and who is not actively engaged in business as a broker-dealer or as a person associated with a broker-dealer as those terms are defined in the Exchange Act.

[63] *Id.* An ''Off-Floor Director'' is an executive officer of a member organization that primarily conducts a non-member public customer business and who is not individually engaged in business on the Exchange floor.

[64] *See* Sections 6.1 and 8.2 of the current Constitution of the Exchange.

[65] Unlike the Prior CBOE Board, the Chairman of the CBOE Board after the Restructuring Transaction will be defined as an Industry Director.

[66] *See* proposed Section 3.1 of the CBOE Bylaws.

[67] *Id.*

[68] *See* proposed Section 3.6 of the CBOE Bylaws.

[69] *See* proposed Section 5.1(a) of the CBOE Bylaws.

[70] *See* proposed Section 3.7 of the CBOE Bylaws. The Vice Chairman will: (i) Preside over the meetings of the CBOE Board in the event the Chairman of the Board is absent or unable to do so, (ii) serve as chair the Trading Advisory Committee, (iii) except as otherwise provided in the Rules or resolution of the CBOE Board, appoint, subject to the approval of the CBOE Board, the individuals to serve on all Trading Permit Holder committees established in the Rules or by resolution of the Board, and (iv) exercise such other powers and perform such other duties as are delegated to the Vice Chairman of the Board by the CBOE Board.

from time to time prescribe.[71] The CBOE Board will continue to be a classified board with staggered terms of office, however, the CBOE Board will consist of two classes of directors, each of which serve for two years, as opposed to the current board that consists of three classes of directors, each of which serve for terms of three years.[72] There is no limit on the number of terms a director may serve on the CBOE Board.

(ii) Nomination and Election of Directors

The Nominating and Governance Committee of CBOE will consist of at least seven directors, including both Industry Directors and Non-Industry Directors, and will at all times have a majority of directors that are Non-Industry Directors.[73] All members of the committee will be recommended by the Nominating and Governance Committee for approval by the Board. The initial Nominating and Governance Committee after the Restructuring Transaction will be selected by the Prior CBOE Board or a committee thereof, and the composition requirements for the Nominating and Governance Committee will be satisfied in connection with the selection of members of the initial Nominating and Governance Committee. Subject to the discussion below, the Nominating and Governance Committee will have the authority to nominate individuals for election to the CBOE Board.[74]

The composition of the new Nominating and Governance Committee under the CBOE Bylaws is different than the composition of the current Nominating Committee under the Constitution of the Exchange.[75] In particular, the current Nominating Committee is composed of ten members. Eight of these members are from the industry and two of these members are from the public. Thus, unlike the new Nominating and Governance Committee, the current Nominating Committee consists of a majority of members from the industry.

In addition, the process for selecting the new Nominating and Governance Committee, which is described below, is different than the process for selecting the current Nominating Committee. In this regard, the current Nominating Committee is not a committee of the Prior CBOE Board, but rather a separate committee elected by the voting members of the Exchange.

After the Restructuring Transaction, the new Nominating and Governance Committee will be bound to accept and nominate the Representative Directors recommended by the Industry-Director Subcommittee (described below), provided that the Representative Directors so nominated by the Industry-Director bcommittee are not opposed by a petition candidate (described below).[76] If such Representative Directors are opposed by a petition candidate then the Nominating and Governance Committee will be bound to accept and nominate the Representative Directors who receive the most votes pursuant to a Run-Off Election (described below).[77] In addition, CBOE and CBOE Holdings will enter into a Voting Agreement pursuant to which CBOE Holdings will agree to vote in favor of the Representative Directors recommended by the Nominating and Governance Committee.[78]

The Industry-Director Subcommittee of the Nominating and Governance Committee will recommend a number of Industry Directors (*i.e.*, Representative Directors) that equals 20% of the total number of directors serving on the CBOE Board, provided that if 20% of the directors then serving on the CBOE Board is not a whole number, such number of Representative Directors will be rounded up to the next whole number.[79] Industry Directors not selected by the Industry-Director Subcommittee will be selected by the Nominating and Governance Committee.[80] The Industry-Director Subcommittee will consist of all of the Industry Directors then serving on the Nominating and Governance Committee.[81]

The Industry-Director Subcommittee will provide a mechanism for Trading Permits Holders to provide input to the Industry-Director Subcommittee with respect to nominees for the Representative Directors.[82] The Industry Director-Subcommittee will issue a circular to the Trading Permit Holders identifying the Representative Director nominees selected by the committee not later than January 15th, or the first business day thereafter if January 15th is not a business day.[83]

Holders of Trading Permits may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition signed by individuals representing not less than 10% of the total outstanding Trading Permits at that time.[84] The names of all Representative Director nominees recommended by the Industry-Director Subcommittee and those selected pursuant to a valid and timely petition will, immediately following their selection, be given to the Secretary who will promptly issue a circular to all of the Trading Permit Holders identifying all such Representative Director candidates.[85]

If one or more valid petitions are received, the Secretary will issue a circular to all of the Trading Permit Holders identifying those individuals nominated for Representative Director by the Industry-Director Subcommittee and those individuals nominated for Representative Director through the petition process as well as of the time and date of a run-off election to determine which individuals will be nominated as Representative Director(s) by the Nominating and Governance Committee (the ''Run-off Election'').[86] In any Run-off Election, each holder of a Trading Permit will have one vote with

[71] *See* proposed Section 3.8 of the CBOE Bylaws. The Prior CBOE Board currently has a Lead Director, and as provided in proposed Section 3.8 of the CBOE Bylaws, CBOE has the ability to continue the practice after the Restructuring Transaction.

[72] *See* proposed Section 3.1 of the CBOE Bylaws. With regard to the initial CBOE Board, the initial term of the Class I directors will end with the first annual stockholders meeting to be held by CBOE following the Restructuring Transaction, and the initial term of the Class II directors will end with the second annual stockholders meeting following the Restructuring Transaction. Class I directors will initially consist of the Chief Executive Officer, three Non-Industry Directors and two Industry Directors (one of whom is a Representative Director (as described below). Class II directors will initially consist of four Non-Industry Directors and three Industry Directors (two of whom are Representative Directors). The CBOE Board is authorized to assign members of the Board already in office to such classes at the time the classification becomes effective.

[73] *See* proposed Section 4.5 of the CBOE Bylaws.

[74] *Id.* In performing this function, the Nominating and Governance Committee will determine, subject to review by the Board, whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of that committee shall, subject to review, if any, by the Board, be final. *See* proposed Section 3.1 of the CBOE Bylaws. It is anticipated that the Nominating and Governance Committee will use director questionnaires in connection with determining the qualifications of director candidates.

[75] *See* Section 4.1 of the current Constitution of the Exchange. The current Nominating Committee, as the name suggests, only has responsibility for nominations. This is different than the responsibilities of the new Nominating and Governance Committee, which will have authority with respect to nominations as well as governance issues.

[76] *See* proposed Section 3.1 of the CBOE Bylaws.

[77] *Id.*

[78] The proposed Voting Agreement is attached as Exhibit 5F to this proposed rule change.

[79] *See* proposed Section 3.2 of the CBOE Bylaws. This section addresses the fair representation requirement for members in Section 6(b)(3) of the Exchange Act. 15 U.S.C. 78f(b)(3).

[80] *See* proposed Section 3.2 of the CBOE Bylaws.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

respect to each Trading Permit held by such Trading Permit Holder for each Representative Director position to be filled that year; provided, however, that no holder of Trading Permits, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate, and any votes cast by a holder of Trading Permits, either alone or together with its affiliates, in excess of this 20% limitation shall be disregarded.[87] The Secretary will issue a circular to all of the Trading Permit Holders setting forth the results of the Run-off Election.[88] The number of individual Representative Director nominees equal to the number of Representative Director positions to be filled that year receiving the largest number of votes in the Run-off Election (after taking into account the voting limitation set forth above) will be the persons approved by the Trading Permit Holders to be nominated as the Representative Director(s) by the Nominating and Governance Committee for that year.

(iii) Committees of CBOE

In addition to the Nominating and Governance Committee discussed above, CBOE will have the following CBOE Board committees: An Executive Committee, an Audit Committee, a Compensation Committee, a Regulatory Oversight Committee and such other standing and special committees as may be approved by the CBOE Board.[89] Except as may be otherwise provided in the CBOE Bylaws or as may be otherwise provided for from time to time by resolution of the CBOE Board, the Board may, at any time, with or without cause, remove any member of any such committees of the Board.[90]

With regard to the Prior CBOE Board, it also has an Executive Committee, an Audit Committee, a Compensation Committee, and a Regulatory Oversight Committee. The current Executive Committee consists of the Chairman of the Prior CBOE Board, the Vice Chairman of that Board, and four other persons who are directors (each of which is appointed by the Vice Chairman with the approval of the Prior CBOE Board).[91] At least 50% of the members of that committee (excluding the Chairman) are Public Directors. The current Audit Committee consists of at least three directors appointed by the Chairman of the Prior CBOE Board with the approval of that Board, the exact number to be determined from time to time by that Board.[92] At least 50% of the members of that committee are Public Directors. The current Compensation Committee consists of the Vice Chairman of the Prior CBOE Board, the Lessor Director, the Chairman of the Financial Planning Committee (a committee of the Exchange), one or more Off-Floor Directors, and such number of Public Directors that will constitute at least 50% of the members of that committee.[93] The Off-Floor Director(s) and the Public Directors are appointed to that committee by the Chairman of the Prior CBOE Board with the approval of that Board. The current Regulatory Oversight Committee consists of at least four directors, all of whom are Public Directors.[94] The members of that committee are appointed by the Chairman of the Prior CBOE Board with the approval of that Board.

After the Restructuring Transaction, members on the new Executive, Audit, and Compensation Committees of CBOE will be recommended by the Nominating and Governance Committee for approval by the CBOE Board.[95] The new Executive Committee will consist of the Chairman of the CBOE Board, the Chief Executive Officer (if a director), the Vice Chairman of the CBOE Board, the Lead Director (if any), at least one Representative Director and such other number of directors that the Board deems appropriate, provided that at all times the majority of the directors serving on the Executive Committee are Non-Industry Directors.[96] CBOE notes that if the Vice Chairman is a Representative Director, the requirement to have at least one Representative Director on the new Executive Committee will be satisfied by the Vice Chairman's participation on that committee. The new Audit Committee will consist of at least three directors, all of whom will be Non-Industry Directors.[97] The new Compensation Committee will consist of at least three directors, all of whom must be Non-Industry Directors.[98] The new Regulatory Oversight Committee will consist of at least four directors, all of whom shall be Non-Industry Directors and all of whom shall be recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board.[99]

The new Executive Committee will have and may exercise all the powers and authority of the CBOE Board in the management of the business and affairs of CBOE, except it will not have the power and authority of the Board to (i) approve or adopt or recommend to the stockholders any action or matter (other than the election or removal of directors) expressly required by Delaware law to be submitted to stockholders for approval, including without limitation, amending the proposed CBOE Certificate of Incorporation, adopting an agreement of merger or consolidation, approving a sale, lease or exchange of all or substantially all of CBOE's property and assets, or approval of a dissolution of CBOE or revocation of a dissolution, or (ii) adopt, alter, amend or repeal any bylaw of CBOE.[100]

Although the current Executive Committee (as well as the new Executive Committee) generally can act in the place of the CBOE Board, the practice of the current Executive Committee has been that it generally does not make a decision unless there is a need for a CBOE Board-level decision between CBOE Board meetings due to the time sensitivity of the matter. In addition, in situations when the current Executive Committee does make a decision between CBOE Board meetings, the CBOE Board is generally aware ahead of time of the potential that the Executive Committee may need to make the decision. This is the case because oftentimes the decision relates to a time-sensitive issue that is discussed by the CBOE Board at a CBOE Board meeting, but that is not yet ripe for decision, and the CBOE Board is advised that the Executive Committee may need to make a decision on the issue prior to the next CBOE Board meeting. It is expected that the foregoing practices will continue with the new Executive Committee. However, with a smaller CBOE Board after the Restructuring Transaction (13 directors versus 23 directors), it likely will be easier to convene the CBOE Board on short notice and there may be less of a need than there is today for the new

[87] In any Run-off Election, Trading Permits representing one-third of the total outstanding Trading Permits entitled to vote, when present in person or represented by proxy, will constitute a quorum for purposes of the Run-off Election. *Id.*

[88] *Id.*

[89] *See* proposed Section 4.1(a) of the CBOE Bylaws.

[90] *Id.*

[91] *See* Section 7.2 of the current Constitution of the Exchange.

[92] *See* Section 7.3 of the current Constitution of the Exchange.

[93] *See* Section 7.4 of the current Constitution of the Exchange.

[94] The current Regulatory Oversight Committee was created by a charter.

[95] *See* proposed Sections 4.2, 4.3 and 4.4 of the CBOE Bylaws. The selection and composition of the Nominating and Governance Committee is discussed above.

[96] *See* proposed Section 4.2 of the CBOE Bylaws.

[97] *See* proposed Section 4.3 of the CBOE Bylaws.

[98] *See* proposed Section 4.4 of the CBOE Bylaws.

[99] *See* proposed Section 4.6 of the CBOE Bylaws.

[100] *See* proposed Section 4.2 of the CBOE Bylaws.

Executive Committee to make decisions. It may also be easier for the CBOE Board to act by unanimous written consent. In any event, the CBOE Board is, and after the Restructuring Transaction will be, fully informed of any decision made by the current (and new) Executive Committee at its next meeting and can always decide to review that decision and take different action.

The new Audit, Compensation, and Nominating and Governance Committees will have such duties and may exercise such authority as may be prescribed by the CBOE Board and their respective Charters as adopted by resolution of the Board.[101] Similarly, the new Regulatory Oversight Committee will have such duties and may exercise such authority as may be prescribed by resolution of the Board, the CBOE Bylaws or the Rules of the Exchange.[102] In general, the new Regulatory Oversight Committee will be charged with overseeing the independence and integrity of the regulatory functions of the Exchange.

In addition to these CBOE Board committees, CBOE will have as Exchange committees a Trading Advisory Committee and such other committees as may be provided in the CBOE Bylaws or the Rules or as may be from time to time created by the CBOE Board.[103] The Trading Advisory Committee will advise the Office of the Chairman regarding matters of interest to Trading Permit Holders.[104] It will consist of such number of members as set by the CBOE Board of Directors from time to time. The majority of the members of the Trading Advisory Committee will be individuals involved in trading either directly or through their firms. The Vice Chairman will be the Chairman of the Trading Advisory Committee and will appoint, with the approval of the CBOE Board, the other members of the committee.

The Trading Advisory Committee essentially will serve as a replacement for the current Floor Directors Committee, which advises the Prior CBOE Board and the Office of the Chairman of that Board regarding trading and floor-related issues. The Floor Directors Committee consists of those directors of the Prior CBOE Board who are primarily engaged in business on the floor of the Exchange (whether serving as Floor Directors or At-Large Directors), the Lessor Director as a non-voting member of that committee, and such other persons as may be appointed as voting or nonvoting members of that committee by the Vice Chairman of the Prior CBOE Board with the approval of that Board.[105]

The Exchange also will continue to have as an Exchange committee after the Restructuring Transaction the Business Conduct Committee (''BCC''), the functions of which are described below.[106] With regard to the composition of the current BCC, the Prior CBOE Board determines the number of members of the committee. In selecting members of that committee, the intent is to pick individuals who represent a broad cross section of the membership of the Exchange as well as individuals who represent the public. It is anticipated that the make-up of the BCC will be the same after the Restructuring Transaction.

(iv) Filling of Vacancies and Removal for Cause

Any vacancy in the CBOE Board, however occurring, including a vacancy resulting from an increase in the number of directors, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists.[107] A director elected to fill a vacancy will hold office until the next annual meeting of stockholders, subject to the election and qualification of his or her successor and to his or her earlier death, resignation or removal.[108] In the event the CBOE Board fills a vacancy resulting from a Representative Director position becoming vacant prior to the expiration of such Representative Director's term, or resulting from the creation of an additional Representative Director position required by an increase in the size of the CBOE Board, the Industry-Director Subcommittee of the Nominating and Governance Committee will either (i) recommend an individual to the CBOE Board to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the CBOE Board from which the Board shall elect the individual to fill such vacancy.[109]

In addition, the CBOE Bylaws provide that no director may be removed from office by a vote of the stockholders at any time except for cause.[110] For purposes of this provision, ''cause'' means only (i) a breach of a director's duty of loyalty to CBOE (as a corporation) or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (iii) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of stock then entitled to be voted at an election of directors.

(v) Disciplinary Matters and Trading and Disciplinary Rule Changes

The current process for the hearing of disciplinary matters, and the rules governing that process, will remain substantively unchanged after the Restructuring Transaction. Under CBOE Rule 17.6(a), the hearing of a disciplinary matter currently is conducted by one or more members of the BCC. As indicated above, the BCC currently consists of industry and public representatives. It has been the BCC's general practice to use three-person BCC hearing panels that include both industry and public representation. CBOE is not proposing to change this process following demutualization. Consistent with CBOE Rule 17.9, any decision of a BCC hearing panel that is not composed of at least a majority of the BCC is reviewed by the full BCC.

In addition, the current process for the review of appeals of disciplinary actions, and the rules governing that process, will remain substantively unchanged after the Restructuring Transaction. Under CBOE Rule 17.10(b), the CBOE Board is the body vested with the authority to review appeals of disciplinary actions. The CBOE Board may appoint a committee of the Board composed of at least 3 directors to review the appeal, but the decision of that committee must be ratified by the CBOE Board. Thus, after the Restructuring Transaction, Trading Permit Holders will have a say in the

[101] *See* proposed Sections 4.3, 4.4 and 4.5 of the CBOE Bylaws.

[102] *See* proposed Section 4.6 of the CBOE Bylaws.

[103] *See* proposed Section 4.1(b) of the CBOE Bylaws. ''Exchange committees'' refers to committees that are not solely composed of directors from the CBOE Board. Except as may be otherwise provided in the CBOE Bylaws, the Rules or the resolution of the CBOE Board establishing any such other committee, the Vice Chairman of the Board, with the approval of the CBOE Board, will appoint the members of such Exchange committees (other than the committees of the CBOE Board) and may designate, with the approval of the Board, a Chairman and a Vice-Chairman thereof. Except as may be otherwise provided in the Bylaws or the Rules, the CBOE Board may, at any time, with or without cause, remove any member of any such Exchange committees.

[104] *See* proposed Section 4.7 of the CBOE Bylaws.

[105] *See* Section 7.5 of the current Constitution of the Exchange.

[106] *See* CBOE Rule 2.1(a).

[107] *See* proposed Section 3.5(a) of the CBOE Bylaws.

[108] *Id.*

[109] *See* proposed Section 3.5(b) of the CBOE Bylaws. Any individual recommended by the Industry-Director Subcommittee to fill the vacancy of a Representative Director position must qualify as an Industry Director.

[110] *See* proposed Section 3.4(c) of the CBOE Bylaws.

review of such appeals by virtue of their representation on the CBOE Board, as discussed above.[111]

The current process for the review of proposed trading and disciplinary rules also will remain substantively unchanged after the Restructuring Transaction. Under proposed Section 10.1 of the CBOE Bylaws, the CBOE Board will continue to be the body that is tasked with approving rule changes, including changes to trading and disciplinary rules. Thus, Trading Permit Holders will have a voice in the review of these rules by virtue of their representation on the CBOE Board. In addition, the current Floor Directors Committee reviews many of CBOE's rule changes in an advisory capacity, particularly trading rules, but the Floor Directors Committee has no decision-making authority with regard to rule changes. After the Restructuring Transaction, the Trading Advisory Committee, which is described above, will essentially take the place of the Floor Directors Committee.[112] It is expected that the Trading Advisory Committee will perform the same rule review function in an advisory capacity that has been performed by the Floor Directors Committee. Accordingly, the Trading Advisory Committee also will provide a mechanism for Trading Permit Holders to provide input on trading rules.

(vi) Officers of CBOE

The officers of CBOE will be a Chief Executive Officer, a Vice Chairman, a President, a Chief Financial Officer, one or more Vice-Presidents (the number thereof to be determined by the CBOE Board of Directors), a Secretary, a Treasurer, and such other officers as the Board may determine, including an Assistant Secretary and Assistant Treasurer.[113] The CBOE Board by an affirmative vote of the majority of the Board will appoint the Chief Executive Officer of CBOE, who will have general charge and supervision of the business of CBOE.[114] In general, the other officers of CBOE will have the duties or powers or both set out in the CBOE Bylaws, as well as such other duties or powers or both as the CBOE Board or the Chief Executive Officer may from time to time prescribe.[115]

These officers essentially will be the same as the current officers of the Exchange. For instance, the Exchange currently has a Chief Executive Officer, who also serves as Chairman of the Prior CBOE Board. After the Restructuring Transaction, the Chief Executive Officer may, but does not have to, be a director or the Chairman of the CBOE Board. The Exchange also currently has a Vice Chairman, although the current Vice Chairman is elected by the membership.[116] After the Restructuring Transaction, the CBOE Board will select the Vice Chairman from among the Industry Directors serving on the CBOE Board.[117] In addition, the Exchange currently has a Chief Financial Officer. This position, however, is not specified in the Constitution of the Exchange. After the Restructuring Transaction, this position will be formally incorporated into the CBOE Bylaws.[118]

The CBOE Bylaws would not restrict an officer from being a Trading Permit Holder or a person associated with a Trading Permit Holder, or a broker or a dealer in securities or commodities or an associated person of such broker or dealer. This is a change from the current Constitution of the Exchange, which restricts an officer from being a member or affiliated with a member or a broker or a dealer in securities or commodities.[119] The Exchange is proposing this change because there are other protections in place that limit the potential conflicts between the Exchange as a self-regulator and Trading Permit Holders, including, among other things, the existence of a Regulatory Oversight Committee as a committee of the Board that consists solely of Non-Industry Directors.

(vii) Self-Regulatory Function and Oversight

As noted above, following the demutualization CBOE will continue to be registered as a national securities exchange under Section 6 of the Exchange Act and thus will continue to be an SRO.[120] As an SRO, CBOE will be obligated to carry out its statutory responsibilities, including enforcing compliance by Trading Permit Holders with the provisions of the federal securities laws and the rules of CBOE. Further, CBOE will retain the responsibility to administer and enforce the rules that govern the activities of CBOE and its Trading Permit Holders. In addition, CBOE will continue to be required to file with the Commission, pursuant to Section 19(b) of the Exchange Act[121] and Rule 19b–4 thereunder,[122] any changes to its rules and governing documents.

The proposed CBOE Certificate of Incorporation contains various provisions designed to protect the self-regulatory functions of CBOE in light of the new structure of the Exchange. For instance, the proposed CBOE Certificate of Incorporation contains a provision that requires each director of the CBOE Board to take into consideration the effect that his or her action would have on CBOE's ability to carry out its responsibilities under the Exchange Act.[123] The proposed CBOE Certificate of Incorporation also contains provisions designed to protect confidential information pertaining to the self-regulatory function of the Exchange.[124]

In addition, CBOE will interpret its Rules to require that any revenue it receives from regulatory fees or penalties will be applied to fund the legal, regulatory, and surveillance operations of the Exchange and will not be used to pay dividends to CBOE Holdings, except in the event of liquidation of CBOE, in which case CBOE Holdings will be entitled to the distribution of CBOE's remaining assets.

(viii) National Market System Plans

CBOE currently is a participant in the following national market system (''NMS'') plans: the Options Price Reporting Authority Plan (''OPRA Plan''), the Consolidated Tape Association (''CTA''), the Consolidated Quotation Plan (''CQ Plan''), the Nasdaq Unlisted Trading Privileges Plan (''Nasdaq UTP Plan''), the Options Intermarket Linkage Plan, the Options Regulatory Surveillance Authority Plan (''ORSA Plan''), and the Options Listing Procedures Plan (''OLPP''). These plans are joint industry plans entered into by

[111] Prior to Restructuring Transaction, it has been the CBOE Board's general practice to appoint a cross-section of directors to the CBOE Board committees that review appeals of disciplinary actions. These committees usually consist of a floor or at-large director, an off-floor director, and a public director. CBOE is not proposing to change this general practice and would expect that CBOE Board committees that review disciplinary decision appeals after the Restructuring Transaction would generally consist of an Industry Director who or whose firm is engaged in trading on the Exchange, an Industry Director whose firm is significantly engaged in conducting a securities business with public customers, and a Non-Industry Director.

[112] A majority of the Trading Advisory Committee will be composed of individuals involved in trading either directly or through their firms.

[113] *See* proposed Section 5.1(a) of the CBOE Bylaws.

[114] *See* proposed Sections 5.1(a) and 5.2 of the CBOE Bylaws.

[115] *See* proposed Sections 5.3, 5.4, 5.5, 5.6, 5.7 and 5.8 of the CBOE Bylaws.

[116] *See* Section 8.1(a) of the current Constitution of the Exchange.

[117] *See* proposed Section 3.7 of the CBOE Bylaws.

[118] *See* proposed Section 5.5 of the CBOE Bylaws.

[119] *See* Section 8.1(b) of the current Constitution of the Exchange.

[120] 15 U.S.C. 78f.

[121] 15 U.S.C. 78s(b).

[122] 17 CFR 240.19b–4.

[123] *See* proposed Article Fifth(d) of the CBOE Certificate of Incorporation.

[124] *See* proposed Article Eleventh of the CBOE Certificate of Incorporation.

SROs for the purpose of providing for (i) last sale and quotation reporting in options and equities, (ii) intermarket options trading, (iii) the joint surveillance, investigation and detection of insider trading on the options exchanges, and (iv) the listing of standardized options. Following the completion of the demutualization, CBOE, in its continuing role as the SRO, will continue to serve as the voting member of these NMS plans, and a representative of CBOE will continue to serve as CBOE's representative with respect to dealing with these plans.

(C) Trading Permits

As part of the Restructuring Transaction, the rules of the Exchange will be amended to reflect the way in which trading access will be granted to the Exchange. Prior to the Restructuring Transaction, Exchange memberships provided trading access to the Exchange. After the Restructuring Transaction, Trading Permits will provide trading access to the Exchange.

''Trading Permits'' are defined as licenses issued by the Exchange that grant the holders or the holders' nominee the right to access the Exchange or one or more of its facilities for the purpose of effecting transactions in securities traded on the Exchange without the services of another person acting as broker, and otherwise to access the Exchange or its facilities for purposes of trading or reporting transactions or transmitting orders or quotations in securities traded on the Exchange, or to engage in other activities that, under the Rules, may only be engaged in by holders of Trading Permits, provided that the holder or the holder's nominee, as applicable, satisfies any applicable qualification requirements to exercise those rights.[125] A Trading Permit will not convey any ownership interest in the Exchange, will only be available through the Exchange, and will be subject to the terms and conditions set forth in proposed Rule 3.1.

As a result of the new structure of the Exchange after the Restructuring Transaction in which ownership will be separated from trading access, the Exchange is proposing to replace the term ''member'' throughout the rules with the term ''Trading Permit Holder.''[126] As indicated above, the term ''Trading Permit Holder'' will be defined as any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit.[127] Holders of Trading Permits will meet the definition of ''member'' in Section 3(a)(3)(A) of the Exchange Act.[128] One's status as a Trading Permit Holder, however, does not confer on that person any ownership interest in the Exchange.[129] As members under the Exchange Act, Trading Permit Holders and their nominees will be subject to the regulatory jurisdiction of the Exchange, including without limitation the Exchange's disciplinary jurisdiction under Chapter XVII of the Rules.[130]

(i) General Features of Trading Permits

The Exchange will have the authority to issue different types of Trading Permits that allow holders to trade one or more products authorized for trading on the Exchange, and to act in one or more trading functions authorized by the Rules.[131] Trading Permits will be for terms as shall be determined by the Exchange from time to time.[132] It is currently anticipated that the Exchange will offer Trading Permits for terms of one month, three months and a year, although these terms may be changed in the future. Prior to the Restructuring Transaction, the Exchange will announce in a circular the types and terms of Trading Permits that the Exchange has determined to issue.

Trading Permits will be subject to such fees and charges as are established by the Exchange from time to time pursuant to Rule 2.20 and the Exchange Fee Schedule.[133] The Exchange will file proposed rule changes under Section 19(b) of the Exchange Act,[134] including, as applicable, Section 19(b)(3)(A)(ii),[135] to establish and change the fees for the types of Trading Permits it has determined to issue. The entire fee for a Trading Permit will be due and payable in accordance with the Exchange Fee Schedule. A TPH organization holding a Trading Permit will be responsible for paying all fees and charges for that Trading Permit.[136] In addition, an individual holding a Trading Permit will be responsible for paying all fees and charges for that Trading Permit.

The Exchange will have the authority to limit or reduce the number of any type of Trading Permit it has determined to issue.[137] Notwithstanding this general authority, in the event the Exchange imposes such a limitation or reduction, the Exchange will be prohibited from eliminating or reducing the ability to trade one or more product(s) of a person currently trading such product(s), and will be prohibited from eliminating or reducing the ability to act in one or more trading function(s) of a person currently acting in such trading function(s), unless the Exchange is permitted to do so pursuant to a rule filing submitted to Commission under Section 19(b) of the Exchange Act.[138] The Exchange will announce in a circular any limitation or reduction in the number of Trading Permits it determines to impose.

The Exchange also will have the authority to increase the number of any type of Trading Permit it has determined to issue by issuing additional Trading Permits of that type, and will announce in a circular any such increase.[139] In addition, the Exchange will have the authority, pursuant to a rule filing submitted to the

[125] *See* proposed CBOE Rule 1.1(ggg).

[126] This change will cause a significant number of the Exchange's rules to be amended. In connection with this rule filing, this change will be made in the rules in Chapters I–III, as well as CBOE Rule 8.3. The Exchange also will make this change in its forms. Because of the length of this rule filing and the fact that the substantive changes to the Exchange's rules regarding trading access are covered by this filing, the Exchange is proposing to submit a companion filing to change the term ''member'' to ''Trading Permit Holder'' in the remainder of the Exchange's rules, as well as to make certain conforming changes. Subject to Commission approval of this filing, the Exchange expects that this companion filing will be filed upon that approval.

[127] *See* proposed Section 1.1(f) of the CBOE Bylaws and proposed CBOE Rule 1.1(gg).

[128] 15 U.S.C. 78c(a)(3)(A). As described in Section (4)(B)(ii) above (Nomination and Election of Directors), the selection process for Representative Directors for the CBOE Board addresses the fair representation requirement for members in Section 6(b)(3) of the Exchange Act. 15 U.S.C. 78f(b)(3).

[129] *See* proposed Section 1.1(f) of the CBOE Bylaws and proposed CBOE Rule 1.1(gg).

[130] *See* proposed CBOE Rule 3.1(a)(iii).

[131] *See* proposed CBOE Rule 3.1(a)(iv).

[132] *Id.*

[133] *See* proposed CBOE Rule 3.1(a)(v).

[134] 15 U.S.C. 78s(b).

[135] 15 U.S.C. 78s(b)(3)(A)(ii).

[136] A ''TPH organization'' refers to an organization that holds a Trading Permit, and is the replacement term for ''member organizations.'' *See* proposed Section 1.1(f) of the CBOE Bylaws and proposed CBOE Rule 1.1(gg).

[137] *See* proposed CBOE Rule 3.1(a)(vi).

[138] 15 U.S.C. 78s(b). In addition, in no event will the Exchange act in a manner under this provision that does not comply with the provisions of Section 6(c)(4) of the Act (15 U.S.C. 78(c)(4)). *See* proposed CBOE Rule 3.1(a)(vi). As noted in a letter submitted by the Exchange to the SEC in connection with SR–CBOE–2006–106, CBOE has been unable to locate records that reflect with certainty the number of CBOE memberships on May 1, 1975. *See* Letter dated November 2, 2007 from Joanne Moffic-Silver, Executive Vice President, General Counsel and Corporate Secretary, CBOE, to Richard Holley III, Senior Special Counsel, Division of Market Regulation, SEC (*http://www.sec.gov/comments/sr-cboe-2006-106/cboe2006106-161.pdf*). The closest date to May 1, 1975 for which CBOE has been able to locate records that CBOE believes can be relied upon to establish this information is June 30, 1975. Specifically, CBOE has financial statements as of June 30, 1975, the end of its then fiscal year, which set forth this information as of that date. The number of CBOE memberships on June 30, 1975 was 1,025.

[139] *See* proposed CBOE Rule 3.1(a)(vii).

Commission under Section 19(b) of the Act,[140] to establish objective standards that must be met to be issued, or to have renewed, a Trading Permit.[141]

Trading Permits will only be issued by the Exchange and cannot be leased or transferred to any person under any circumstances, except in the following situations.[142] In this regard, a TPH organization may change the designation of the nominee in respect of each Trading Permit it holds in a form and manner prescribed by the Exchange.[143] In addition, a Trading Permit Holder may, with the prior written consent of the Exchange, transfer a Trading Permit to a TPH organization or to an organization approved to be a TPH organization: (A) Which is an affiliate; or (B) which continues substantially the same business without regard to the form of the transaction used to achieve such continuation, *e.g.*, merger, sale of substantially all assets, reincorporation, reorganization or the like.[144] For example, this provision would allow the Exchange to approve a transfer of a Trading Permit from an individual or TPH organization to an affiliated TPH organization of that individual or TPH organization.

(ii) Issuance of Trading Permits

In connection with the Restructuring Transaction, Trading Permits will be issued automatically to each current member of the Exchange that has the ability to trade. In this regard, prior to the date of the Restructuring Transaction, a person who is, or is treated the same as, a ''member'' of the Exchange under Sections 1.1 and 2.1 of the Constitution of the Exchange may submit a post-Restructuring Transaction trading application to the Exchange in accordance with such procedures as shall be established by the Exchange.[145] Provided the applicant is in good standing as of the date of the Restructuring Transaction, complies with the application procedures established by the Exchange and pays any applicable fees, the Exchange in connection with the Restructuring Transaction will issue to the applicant, as applicable, a Trading Permit in respect of: (A) Each membership not subject to an effective lease as of the date of the Restructuring Transaction that is owned by the applicant; (B) each membership that is leased as a lessee by the applicant as of the date of the Restructuring Transaction; (C) each trading permit issued by the Exchange prior to the Restructuring Transaction that is held by the applicant, provided that in the case of a CBSX trading permit, the Exchange shall issue a Trading Permit in respect of the CBSX trading permit that only provides the right to effect transactions on the CBSX; [146] and (D) each Temporary Membership that is held by such applicant.[147] As the foregoing indicates, persons who are Temporary Members under Interpretation and Policy .02 of CBOE Rule 3.19 will be guaranteed Trading Permits in connection with the Restructuring Transaction, provided they comply with the requirements noted above. In addition, persons who are issued Trading Permits as set forth above will have the ability pursuant to those Trading Permits to continue after the Restructuring Transaction trading any product, and acting in any trading function, that those persons traded, or acted in, at the time of the Restructuring Transaction.[148]

At the time of Restructuring Transaction and afterwards, Trading Permits also will be issued after an application process. Persons who are seeking trading access to the Exchange for the first time, as well as current Trading Permit Holders seeking to hold additional Trading Permits, would need to go through this application process. Only a person approved to hold a Trading Permit (a ''Qualified Person'') is eligible to submit an application for a Trading Permit.[149]

We expect that this application process will be a simple process that generally will involve notifying the Exchange of the type, term and number of Trading Permits that a Qualified Person would like to receive.[150] To be eligible to be issued a type of Trading Permit, a Qualified Person must have satisfied the application requirements for that type of Trading Permit. In addition, to be eligible to use a type of Trading Permit, a Qualified Person must satisfy all requirements related to that type of Trading Permit.

From time to time, the Exchange in its discretion may determine to make available one or more of a type of Trading Permit through (i) a process in which Trading Permits will be issued to Qualified Persons by a random lottery (''Random Lottery Process''), or (ii) a process in which Trading Permits will be issued to Qualified Persons based on the order in time that such Qualified Persons applied for such Trading Permits (''Order in Time Process'').[151] The number of Trading Permits that the Exchange determines to make available is referred to as the ''issuance number.'' In connection with an issuance of such Trading Permits, and notwithstanding an application for a greater number of such Trading Permits, a Qualified Person and any affiliated Qualified Person will be eligible to receive no more than the greater of 10 such Trading Permits or 20% of the issuance number of such Trading Permits.

This limit, however, will not apply in the event the issuance number of such Trading Permits exceeds the demand for such Trading Permits.[152] In such a situation, Trading Permits will be made

[140] 15 U.S.C. 78s(b).

[141] *See* proposed CBOE Rule 3.1(a)(viii). The Exchange also has included a savings clause in Rule 3.1 that provides that notwithstanding Rule 3.1, as well as Rule 3.1A (which addresses the issuance of Trading Permits to current members), nothing in those rules will eliminate or restrict the Exchange's authority to delist any product or to take any action (remedial or otherwise) under the Exchange Act, the Bylaws and the Rules, including without limitation the Exchange's authority to take disciplinary or market performance actions against a person with respect to which the Exchange has jurisdiction under the Exchange Act, the Bylaws and the Rules. *See* proposed CBOE Rule 3.1(a)(ix).

[142] *See* proposed CBOE Rule 3.1(d)(i).

[143] *See* proposed CBOE Rule 3.1(d)(ii).

[144] *Id.*

[145] *See* proposed CBOE Rule 3.1A(a).

[146] Holders of CBSX trading permits and holders of Interim Trading Permits will be issued Trading Permits pursuant to this provision. CBOE Rule 3.26, which currently provides for the issuance of CBSX trading permits, will be deleted as part of this rule filing because all Trading Permits after the Restructuring Transaction will be issued under proposed CBOE Rule 3.1. For the same reason, CBOE Rule 3.27, which currently provides for the issuance of Interim Trading Permits, also will be deleted as part of this rule filing.

[147] A person who was eligible to receive Trading Permit(s) pursuant to this provision but who failed to comply with the application or other requirements, must submit an application for a Trading Permit as described below and must go through the approval process to hold a Trading Permit to be eligible to receive a Trading Permit. *See* proposed CBOE Rule 3.1A(c).

[148] This guarantee is subject to the provision noted above that provides that notwithstanding Rule 3.1, as well as Rule 3.1A, nothing in those rules will eliminate or restrict the Exchange's authority to delist any product or to take any action (remedial or otherwise) under the Exchange Act, the Bylaws and the Rules, including without limitation the Exchange's authority to take disciplinary or market performance actions against a person with respect to which the Exchange has jurisdiction under the Exchange Act, the Bylaws and the Rules. *See* proposed CBOE Rule 3.1(a)(ix). In addition, this guarantee is subject to the continuing satisfaction of any applicable qualification requirements, as well as to the Exchange's ability discussed above to limit or reduce the number of any type of Trading Permit pursuant to a rule filing with the Commission. *See* proposed CBOE Rules 3.1A(a) and 3.1(a)(vi).

[149] *See* proposed CBOE Rule 3.1(b)(i). The Exchange is not proposing to substantively change the current process to become a ''member'' of the Exchange, which after the Restructuring Transaction will be the process to become a ''Trading Permit Holder.'' *See, e.g.*, CBOE Rule 3.9.

[150] *Id.*

[151] *See* proposed CBOE Rule 3.1(b)(iii). The Exchange also will have the authority to modify these processes or to establish any other objective process to issue Trading Permits pursuant to a rule filing submitted to the Commission under Section 19(b) of the Act. 15 U.S.C. 78s(b).

[152] *Id.*

available through the Order in Time Process. Qualified Persons applying for Trading Permits in this situation will be automatically issued such permits until the number of permits issued equals the issuance number.

In the event the demand for Trading Permits exceeds the issuance number, Trading Permits will be made available through the Random Lottery Process or the Order in Time Process.[153] In such a situation, the Exchange in its discretion may maintain a waiting list to be used to issue Trading Permits pursuant to the Order in Time Process.[154] If the Exchange maintains a waiting list, Qualified Persons will be placed on that waiting list based on the order in time that such persons submitted applications, and such persons may at any time voluntarily withdraw from that waiting list. A person on the waiting list also may submit a notification to the Exchange to adjust the number of Trading Permits that such person would like to receive at any time prior to an announcement of an issuance of such Trading Permits. Persons on the waiting list will be issued Trading Permits based on the order in time they were placed on the waiting list.

(iii) Termination, Change and Renewal of Trading Permits.

A Trading Permit Holder seeking to terminate that holder's Trading Permit must notify the Exchange, prior to the deadline announced by the Exchange in a circular and in a form and manner prescribed by the Exchange, that the holder is terminating that Trading Permit at the end of its term.[155] In addition, a Trading Permit Holder seeking to replace that holder's Trading Permit with a different Trading Permit must file with the Exchange, prior to the deadline announced by the Exchange in a circular, an application for that different Trading Permit pursuant to the application process described above.[156] In the event a Trading Permit Holder does not take either of the foregoing actions with respect to a Trading Permit, the Exchange will automatically renew that Trading Permit for the same term as the expiring term.[157] In renewing that Trading Permit, the Exchange will have the authority to issue one or more Trading Permits that represent the same or more trading right(s) as the expiring permit.[158]

In addition, a Trading Permit Holder seeking to hold an additional Trading Permit must file with the Exchange an application for that Trading Permit pursuant to the application process described above.[159] To change the term of a Trading Permit at the end of its current term to a longer or shorter term currently offered by the Exchange, a Trading Permit Holder must notify the Exchange of that holder's desire to change the term prior to the deadline announced by the Exchange in a circular and in a form and manner prescribed by the Exchange.[160] Such a change will be effective only at the end of the current term of the Trading Permit.

(iv) Tier Appointments

The Exchange is proposing to amend CBOE Rule 8.3 to provide for a new type of appointment called a ''tier appointment.'' A ''tier appointment'' is an appointment to trade one or more options classes that must be held by a Market-Maker to be eligible to trade the options class or options classes subject to that appointment.[161] A Market-Maker that seeks to trade an options class or options classes subject to a tier appointment must submit an application for that tier appointment in accordance with, and subject to the same terms and conditions as, the application process for Trading Permits as described above. Notwithstanding this application requirement, in the event a current member of the Exchange at the time of the Restructuring Transaction is trading an options class with respect to which the Exchange is establishing a tier appointment, the Exchange in connection with the Restructuring Transaction will issue to that member such a tier appointment provided that the Exchange is notified by that member of that member's desire to hold such a tier appointment.[162]

Tier appointments will be in addition to the current appointment cost process set forth in CBOE Rule 8.3, which will remain unchanged in connection with the Restructuring Transaction. In general, under that process, the number of memberships owned or leased by a Market-Maker serves as the basis for determining the number/types of options classes that the Market-Maker can trade. In this regard, each membership held by a Market-Maker has an appointment credit of 1.0, and each option listed on the Exchange has an assigned appointment cost. Under that process, for example, a Market-Maker with one membership could trade options on the Nasdaq 100 Index, which has an appointment cost of .50, and options on the CBOE Volatility Index, which also has an appointment cost of .50.

Issuance of tier appointments will be in accordance with, and subject to the same terms and conditions as, the issuance processes for Trading Permits as described above (*i.e.,* the Random Lottery Process or the Order in Time Process).[163] A Market-Maker that is issued a tier appointment must designate to the Exchange the Trading Permit with which that tier appointment is associated, and may designate no more than one tier appointment per Trading Permit. A tier appointment will be for the same term as the Trading Permit with which the tier appointment is associated. Termination, change, renewal, and transfer of tier appointments will be in accordance with, and subject to the same terms and conditions as, the processes for Trading Permits as described above. In this regard, for example, if a holder of tier appointment does not notify the Exchange that the holder is terminating that tier appointment and does not file an application to replace that tier appointment, that tier appointment will be renewed along with its associated Trading Permit for the same term as the expiring term of that Trading Permit.

Tier appointments will be subject to such fees and charges as are established by the Exchange from time to time pursuant to Rule 2.20 and the Exchange Fee Schedule. The Exchange will file proposed rule changes under Section 19(b) of the Exchange Act,[164] including, as applicable, Section 19(b)(3)(A)(ii),[165] to establish and change the fees for tier appointments. In accordance with, and subject to same terms and conditions as, the processes for Trading Permits as described above, the Exchange will have the authority with respect to any type of tier appointment it has determined to establish to limit or reduce the number of that type of tier appointment, to increase the number of that type of tier appointment, and to establish objective standards to be issued, or to have

[153] *Id.*

[154] *See* proposed CBOE Rule 3.1(b)(ii).

[155] *See* proposed CBOE Rule 3.1(c)(i).

[156] *See* proposed CBOE Rule 3.1(c)(ii).

[157] *See* proposed CBOE Rule 3.1(c)(iii). This automatic renewal provision will not limit the Exchange's authority to limit or reduce the number of any type of Trading Permit.

[158] *Id.* To the extent the Exchange determines to issue one or more Trading Permits that represent the same or more trading right(s) as an expiring Trading Permit, the Exchange will provide all holders of that type of expiring Trading Permit with the new Trading Permit(s).

[159] *See* proposed CBOE Rule 3.1(c)(iv).

[160] *See* proposed CBOE Rule 3.1(c)(v).

[161] *See* proposed CBOE Rule 8.3(e).

[162] *See* proposed CBOE 3.1A(b).

[163] *See* proposed CBOE Rule 8.3(e).

[164] 15 U.S.C. 78s(b).

[165] 15 U.S.C. 78s(b)(3)(A)(ii).

renewed, that type of tier appointment.[166]

(D) Other Changes to the Rules

(i) Chapter I of the Rules

As mentioned above, the Exchange is proposing to replace the term ''member'' with ''Trading Permit Holder'' throughout the Exchange's rules. Thus, references to the terms member and membership in Chapters I will be replaced.[167] For instance, in Rule 1.1(f) and throughout the rules, the term ''Clearing Member'' will be replaced with ''Clearing Trading Permit Holder.'' [168]

In addition, the Exchange has amended the definitions in Chapter I to reflect the use of Trading Permits. In this regard, for instance, the terms ''Lessor'' and ''Lessee'' have been deleted because these concepts will not exist after the Restructuring Transaction. In their place, the Exchange has added the definitions of ''person'' and ''Trading Permit Holder.'' [169] A person is defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof, and a Trading Permit Holder is defined by reference to the definition of that term in Section 1.1 of the CBOE Bylaws. The Exchange also has added a definition of ''Restructuring Transaction'' to reflect the point in time at which Trading Permits will be issued.[170]

Further, the Exchange has added a definition of ''Trading Permit,'' which is discussed above, and a definition of ''TPH Department.'' [171] The TPH Department is defined as the department or division of the Exchange (which may be referred to by the Exchange from time to time by a name other than the TPH Department) that has the functions set forth in the rules for the TPH Department. The TPH Department will serve as the successor to the current Membership Department and will continue the functions of that department, such as processing applications for Trading Permits (instead of applications for membership). The definition is drafted in this manner to give the Exchange the flexibility to call the department something other than the TPH Department in the future without having the amend the rules.

The Exchange also has made technical changes to certain definitions in Chapter I that do not change the substance of these definitions. For example, the Exchange has amended the term ''Executive Officer'' to clarify that the term refers to an executive officer of a TPH organization.[172] In addition, the Exchange has amended the definition of ''Good Standing'' to provide that the term means ''that a Trading Permit Holder or associated person is not delinquent respecting Exchange fees or other charges and is not suspended or barred from being a Trading Permit Holder or from being associated with a Trading Permit Holder.'' [173]

(ii) Chapter II of the Rules

CBOE Rule 2.1(a) will be amended to limit its scope to Exchange committees (*i.e.,* committees that are not solely composed of CBOE Board directors) and to modify the manner of appointment to such committees. Prior to the Restructuring Transaction, the Rules generally provided that except as may be otherwise provided in the Constitution or the rules, the Vice Chairman of the Board, with the approval of the CBOE Board, would appoint the chairmen and members of committees (other than the Business Conduct Committee) to serve for terms expiring at the first regular meeting of the Board of Directors of the next calendar year. After the Restructuring Transaction, the Rules will be amended to provide that the Vice Chairman of the Board, with the approval of the CBOE Board, will appoint the chairmen and members of Exchange committees (other than the Business Conduct Committee), with the exception that if a different manner of appointment is specified for any specific committee under the CBOE Bylaws, the rules or a resolution of the CBOE Board establishing that committee, that different manner of appointment will be followed. After the Restructuring Transaction, the President, with approval of the Board, will continue to have the authority to appoint members of the Business Conduct Committee.

CBOE Rule 2.1(a) also has been amended to streamline the process for filling vacancies. In this regard, the Vice Chairman of the Board, with the approval of the CBOE Board, would fill vacancies on Exchange committees (other than the Business Conduct Committee), unless a different process is specified for any specific committee under the CBOE Bylaws, the Rules or a resolution of the CBOE Board establishing that committee. Similarly, the President, with approval of the CBOE Board, would fill vacancies on the Business Conduct Committee.

CBOE Rule 2.1(b) has been amended to provide a definition of quorum for committee meetings. In this regard, absent a different provision in the CBOE Bylaws, the Rules, a committee charter or a CBOE Board resolution related to a specific committee, a majority of members of a committee shall constitute a quorum. This is consistent with current Exchange practice for determining a quorum for committee meetings. This rule also has been amended to delete the reference to ''informally'' in the last sentence so that it now provides that ''[c]ommittees may act by written consent of all of the members of the committee.'' This change was made because committees can take all types of actions pursuant to written consent, and not just ''informal'' actions.

Further, CBOE Rules 2.1(d) and 2.2 have been amended to clarify certain aspects of the authority of the CBOE Board. With regard to CBOE Rule 2.1(d), the Exchange is proposing to clarify in the first sentence of that provision that each committee will have such other powers and duties as may be delegated to it by the CBOE Board in a committee charter or otherwise. The Exchange also is proposing to move the second sentence of that provision into a new paragraph (e) of CBOE Rule 2.1 and to modify that sentence so that it provides that each Exchange committee is subject to the control and supervision of the CBOE Board. The Exchange is limiting this provision to Exchange committees because the CBOE Board's relationship to CBOE Board committees is governed by specific delegations of authority under the CBOE Bylaws, applicable committee charters and Delaware law.

With regard to CBOE Rule 2.2, the Exchange is clarifying that the CBOE Board has the authority to review, modify, suspend or overrule any and all actions (or inactions) of any committee, officer, representative or designee of the

[166] The Exchange also has included a savings clause in proposed Rule 8.3 that provides that notwithstanding the rule, nothing in it will eliminate or restrict the Exchange's authority to delist any product or to take any action (remedial or otherwise) under the Exchange Act, the Bylaws and the Rules, including without limitation the Exchange's authority to take disciplinary or market performance actions against a person with respect to which the Exchange has jurisdiction under the Exchange Act, the Bylaws and the Rules. *Id.*

[167] References to these terms also will be replaced in Chapters II and III and CBOE Rule 8.3 as part of this rule filing, and in the remaining rules as part of the companion filing noted above.

[168] In this regard, any change to a defined term in Chapter I will be reflected in Chapters II and III and CBOE Rule 8.3 as part of this rule filing, and in the remaining rules as part of the companion filing noted above.

[169] *See* proposed CBOE Rules 1.1(ff) and (gg).

[170] *See* supra note 3.

[171] *See* proposed CBOE Rule 1.1(iii) for the definition of TPH Department.

[172] *See* proposed CBOE Rule 1.1(h).

[173] *See* proposed CBOE Rule 1.1(jj).

Exchange taken (or not taken) pursuant to the rules; provided that the CBOE Board acts in accordance with any review procedures set forth in Chapters XVII, XVIII and XIX of the Rules, to the extent applicable to actions (or inactions) under those Chapters. The Exchange is making this change to CBOE Rule 2.2 to clarify that consistent with the general rule under Delaware law, the CBOE Board has the authority to review actions taken (or actions not taken) by committees, officers, representatives and designees of the Exchange pursuant to the rules. At the same time, the Exchange has included language that provides that the processes related to CBOE Board review (if any) set forth in Chapters XVII, XVIII and XIX of the rules will be followed. In other words, to the extent a particular process is not set forth in the rules (such as the ones in Chapters XVII, XVIII and XIX), the CBOE Board will have the authority to review actions taken (or actions not taken) pursuant to the rules by committees, officers, representative and designees of the Exchange.

Finally, conforming changes have been made to the rules in Chapter II to reflect the use of Trading Permits. For instance, CBOE Rule 2.23 has been amended to clarify that the Exchange will have the authority to suspend or revoke a Trading Permit in the event the holder of that permit does not pay any amounts due to the Exchange. In addition, references to the term ''dues'' have been deleted in CBOE Rules 2.20, 2.22 and 2.23 because this term generally refers to payments made by members in a membership organization.[174]

(iii) Chapter III of the Rules

Conforming changes throughout Chapter III will be made to reflect the operation of Trading Permits. For example, the Rules relating to the sale, transfer and lease of memberships, and to the member death benefit will be deleted based on the operation of Trading Permits.[175] In addition, CBOE Rule 3.1 will be deleted and replaced with a new Rule 3.1 (discussed above) that addresses Trading Permits. The prior version of Rule 3.1 was designed to, among other things, ensure that memberships were used for trading on the Exchange. This requirement will no longer be necessary in connection with the use of Trading Permits.

The qualifications to be a member or member organization, and the application process to become a member, will be the same after the Restructuring Transaction with modifications to reflect the use of Trading Permits.[176] For example, the Exchange is proposing to amend CBOE Rule 3.3 to condense the description of the requirements that an organization must meet to become a TPH organization, but is not substantively changing these requirements.

The Exchange also is making technical changes to certain rules in Chapter III that do not change the substance of these rules. For instance, the Exchange is proposing to amend Rule 3.5 to clarify that the Exchange will have the authority to deny or condition persons from becoming or being associated with Trading Permit Holders under the circumstances that are already set forth in that rule. In addition, the Exchange is making similar changes to CBOE Rule 3.18 to clarify the Exchange's authority when a Trading Permit Holder or a person associated with a Trading Permit Holder becomes subject to a statutory disqualification. Further, the Exchange is amending CBOE Rule 3.10 to clarify when Trading Permit Holder status will become effective, and is amending CBOE Rule 3.11 to clarify that the Exchange will announce such effectiveness in the Exchange Bulletin.

In addition, because an individual will be able to hold a Trading Permit in his or her name, the process for designating nominees for Trading Permits in CBOE Rule 3.8 will be amended to require a TPH organization that has an associated person who is an individual holder of a Trading Permit to designate that individual as the nominee for that Trading Permit.[177] Moreover, references to the concept of registering a membership for a member organization will be deleted in Rule 3.8 because that concept will have no application once Trading Permits are used to provide trading access to the Exchange.[178] Further, the Exchange is streamlining the process of designating nominees for TPH organizations that have multiple Trading Permits in their name. Currently, a member organization that has multiple memberships in its name can designate the same individual to be the nominee for those memberships, except that for each membership used for trading in open outcry on the trading floor, the member organization must designate a different individual to be the nominee for each of those memberships. As modified, CBOE Rule 3.8(a)(ii) will allow TPH organizations to designate the same individual to be the nominee for Trading Permits held in its name, including Trading Permits used for trading in open outcry on the trading floor.

The Exchange also is deleting the requirement in CBOE Rule 3.7(g) that a member keep and maintain a current copy of the Constitution and rules in a readily accessible place, and that a member organization that is approved to do business with the public make the Constitution and rules available for examination by customers. Because the Exchange is required to maintain a copy of its governing documents and rules online, the Exchange believes that this requirement is no longer necessary.

Finally, the Exchange is amending CBOE Rule 3.9 to, among other things, delete the requirement that the Exchange post notices of applications on the Exchange Bulletin Board.[179] As trading on the Exchange becomes more electronic and remote from the Exchange, the use of a physical bulletin board at the Exchange to notify persons is outdated.[180] Despite this change, persons will still receive notice of applications because the Exchange will continue to be required to post them in the Exchange Bulletin.

Statutory Basis

For the reasons set forth above, the Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,[181] in general, and furthers the objectives of Section 6(b)(1) of the Exchange Act,[182] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its Exchange members and persons associated with its Exchange members, with the

[174] This change also has been made to other rules in Chapters I–III. *See, e.g.,* CBOE Rule 1.1(jj).

[175] In this regard, CBOE Rules 3.12, 3.13, 3.14, 3.15, 3.24 and 3.25 will be deleted. One of the rules to be deleted, Rule 3.14(d), describes the rights of membership owners and grantees in Authorization to Sell arrangements. Persons in these arrangements should be aware that the Authorization to Sell process will terminate in connection with the Restructuring Transaction and that the Exchange will no longer have any involvement in these arrangements. In addition, persons in these arrangements should consider the impact, if any, the Restructuring Transaction (*i.e.,* the conversion of memberships into Class A common stock in CBOE Holdings) might have on the collateral in these arrangements.

[176] *See, e.g.,* CBOE Rules 3.2 and 3.3.

[177] *See* CBOE Rule 3.8(a).

[178] The Exchange also is making this change to other rules in Chapters I–III and to CBOE Rule 8.3 as part of this rule filing, and in the remaining rules as part of the companion filing noted above.

[179] *See* CBOE Rule 3.9(e).

[180] The Exchange also is making this change to other rules in Chapters I–III as part of this rule filing, and in the remaining rules as part of the companion filing noted above. CBOE Rule 8.3 is not affected by this change.

[181] 15 U.S.C. 78f(b).

[182] 15 U.S.C. 78f(b)(1).

provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[183] Among other things, the Certificate of Incorporation and Bylaws of CBOE Holdings and CBOE are designed to protect and maintain the integrity of the SRO functions of CBOE, and to allow it to carry out its regulatory responsibilities under the Exchange Act.

In addition, the Exchange believes that this filing is consistent with the requirements of Section 6(b)(3) of the Exchange Act that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.[184] As described above, the CBOE Bylaws provide a process for Trading Permit Holders to select members of the CBOE Board (*i.e.*, Representative Directors). The CBOE Bylaws also require that a majority of directors on the CBOE Board be Non-Industry Directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents,[185] the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–88 and should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[186]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20464 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

[183] 15 U.S.C. 78f(b)(5).

[184] 15 U.S.C. 78f(b)(3).

[185] The Commission notes that the Exchange has consented to an extension of time for Commission consideration of the proposed rule change. *See* Item 6 of CBOE's Form 19b–4 submission.

[186] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58428; File No. SR–CBOE–2008–86]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Voluntary Professional Transaction Fees

August 27, 2008.

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 August 19, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. 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

CBOE is proposing to amend its fees schedule for certain non-broker-dealer orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the

[1] 15 U.S.C. 78s(b)(1).

[2] 2 17 CFR 240.19b–4.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 7, 2008, the Securities and Exchange Commission approved a proposed rule change by the CBOE to establish a Voluntary Professional [3] designation.[4] This designation permits non-broker-dealer customers to voluntarily have their orders categorized as broker-dealer orders for order handling, order execution, and cancel fee calculation purposes. In the aforementioned filing, the Exchange represented that it intends to establish, via a separate rule filing, a transaction fee applicable to Voluntary Professionals.

In accordance with that representation, the Exchange now proposes to amend its fees schedule to establish the transaction fees that would be applicable to Voluntary Professional orders. Specifically, the Exchange proposes to charge Voluntary Professional orders a $0.20 per contract transaction fee in all equity options and options on indexes, exchange-traded funds and holding company depository receipts (except those listed below). The Exchange proposes a $0.30 per contract transaction fee in XEO options, a $0.40 per contract transaction fee in DXL options and all volatility index options, and a $0.85 per contract transaction fee in credit default and credit default basket options.

As reflected in Exhibit 5, the Exchange proposes to amend footnote 14 (index option surcharge fee) to clarify that the Surcharge fee would apply to Voluntary Professionals.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) [6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members. The proposed fee change would enable the Exchange to implement the Voluntary Professional designation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–86 and should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20524 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* CBOE Rule 1.1(fff).

[4] *See* Securities Exchange Act Release No. 58327 (August 7, 2008), 73 FR 47988 (August 15, 2008).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58432; File No. SR–NASDAQ–2008–062]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Clarify the Application of Nasdaq Rules When a Listed Company Combines With a Non-Nasdaq Entity

August 27, 2008.

I. Introduction

On July 10, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule

[1] 15 U.S.C. 78s(b)(1).

19b–4 thereunder,[2] a proposed rule change to clarify the application of certain Nasdaq listing rules when a Nasdaq-listed company combines with a non-Nasdaq entity. The proposed rule change was published for comment in the **Federal Register** on July 23, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq Rule 4340(a) requires that an issuer must apply for initial listing in connection with a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq listing. The current Rule refers to such a transaction as a ''Reverse Merger'' and provides a non-exclusive list of factors that Nasdaq will consider to determine if a transaction should be considered a Reverse Merger for purposes of the Rule.[4]

Nasdaq notes that Rule 4340(a) was originally adopted in 1993 to address concerns associated with non-Nasdaq entities seeking a ''backdoor listing'' on Nasdaq through a business combination involving a Nasdaq issuer.[5] In these combinations, a non-Nasdaq entity would purchase a Nasdaq issuer in a transaction that would result in the non-Nasdaq entity obtaining a Nasdaq listing without qualifying for initial listing or being subject to the background checks and scrutiny normally applied to issuers seeking initial listing.

While this Rule was originally adopted to deal with companies seeking a ''backdoor listing'' by acquiring a listed shell company, its language is not limited in that regard. Accordingly, Nasdaq states that it has applied the rule to any transaction where there is a change of control potentially allowing a non-Nasdaq entity to obtain a Nasdaq listing. For example, Nasdaq has applied the rule to mergers involving operating companies in substantially similar businesses and, in appropriate cases, to mergers of ''equals,'' where the companies are approximately the same size.[6] This allows Nasdaq staff to review the post-transaction entity, including any new officers, directors and control persons, before the transaction is consummated, thereby allowing staff to confirm that the post-transaction entity will meet all initial listing criteria and that there are no public interest concerns.

However, given the use of the term ''Reverse Merger'' within Rule 4340(a), and the existence of a footnote in IM–4350–1 referring to ''backdoor listings,''[7] Nasdaq states that companies have expressed confusion as to the scope of the Rule. Nasdaq therefore proposes to remove these references from Rule 4340(a) and IM–4350–1 and instead refer simply to business combinations with non-Nasdaq entities resulting in a change of control.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.[9]

The Commission believes that the proposed rule change will provide clarity to, and eliminate any ambiguity over, the scope of application of Nasdaq Rule 4340. In particular, the revised rule language will make clear that an issuer must satisfy the initial listing requirements whenever it enters into any transaction with a non-Nasdaq entity, resulting in a change of control of the listed company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq listing. The Commission notes that the Rule will continue to apply to ''backdoor listings'' or ''reverse mergers,'' but that the proposed rule change will clarify that the Rule also applies to a broader category of business combinations that result in a change of control of the issuer. The Commission believes that, in the case of any transaction resulting in such a change of control, which includes a backdoor listing, it is important for Nasdaq to ensure that the company meets all initial listing criteria and is subject to the scrutiny normally applied to issuers seeking initial listing. Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASDAQ–2008–062) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20468 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42848 (July 17, 2008), 73 FR 42848.

[4] Specifically, the rule provides that, in determining whether a Reverse Merger has occurred, Nasdaq will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer, as well as the nature of the businesses and relative size of the Nasdaq issuer and non-Nasdaq entity. Securities Exchange Act Release No. 44067 (March 13, 2001), 66 FR 15515 (March 19, 2001) (SR–NASD–01–01).

[5] Securities Exchange Act Release No. 32264 (May 4, 1993), 58 FR 27760 (May 11, 1993) (SR–NAS–93–07).

[6] *See, e.g.*, Decision 2002/2003–9 of the Nasdaq Listing and Hearing Review Council (December 2002), available at: *http://www.nasdaq.com/about/NLHRCDecisions20022003.pdf.*

[7] *See* Nasdaq IM–4350–1, footnote 4.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58435; File No. SR–NASDAQ–2008–070]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Credits for Members Using the Nasdaq Crossing Network

August 27, 2008.

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 August 15, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. This rule proposal, which is effective upon filing with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Commission, shall become operative on September 1, 2008.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the [sic] Substance of the Proposed Rule Change

Nasdaq is adopting a fee and credit schedule for the Nasdaq Crossing Network.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets [sic].[5]

7018. Nasdaq Market Center Order Execution and Routing

(a)–(e) No change.

(f) Crossing Network

All orders executed in the Nasdaq Crossing Network	No charge for execution
Credit for eligible executions through the Crossing Network from September 1, 2008 through September 30, 2008.	$0.0010 per share

For the purposes of this subsection ''eligible executions'' are all executions of trades through the Nasdaq Crossing Network other than those executions that have the same market participant on both sides of the trade.

(f)–(h) Current subsections (f) through (h) will be renumbered as (g) through (i) without other modification.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is adopting a fee and credit schedule for the Nasdaq Crossing Network. The Commission approved the Nasdaq Crossing Network on July 5, 2006.[6] The Nasdaq Crossing Network provides an execution option to market participants trading in Nasdaq and other exchange-listed securities that facilitates the execution of block trades quickly and anonymously, while minimizing market impact and associated price movements. The Nasdaq Crossing Network consists of a series of trading day (''Intraday'') and after hours (''Post-Close'') Reference Price Crosses.

Since Nasdaq launched the Crossing Network, Nasdaq has not charged a fee to members for executing orders through the Intraday or Post-Close Crosses. Under the rule change, although there will continue to be no fee associated with trading through the Crossing Network, member firms will be eligible for a credit of $0.0010 per share for orders executed through the Crossing Network during the month of September. The credit will not be subject to volume or use requirements. Trades that involve the same market participant on both sides of the transaction, however, will not be eligible for the credit.

After the expiration of the promotional pricing on September 30, 2008, order executions through the Crossing Network will continue to be offered to members at no charge.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The promotional pricing for the Crossing Network is an equitable allocation of fees because the credit will apply equally to all members who execute orders through the Crossing Network. Furthermore, the credit is reasonable because it is intended to encourage participation in the Crossing Network, which would provide additional data to Nasdaq to evaluate the need for any future changes to the product or the relevant fee schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–070. 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

[5] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaq.complinet.com.*

[6] *See* Securities Exchange Act Release No. 54248 (July 31, 2006) (SR–NASDAQ–2006–019). Prior to the effective date of Nasdaq's operation as an exchange for Nasdaq-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR–NASD–2005–140).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–070, and should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20516 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58440; File No. SR–NASDAQ–2008–071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Generic Listing Standards for Index Multiple Exchange Traded Fund Shares and Index Inverse Exchange Traded Fund Shares

August 28, 2008.

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 August 20, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to amend Nasdaq Rule 4420(j) to list and trade, or trade pursuant to unlisted trading privileges (''UTP''), shares of a series of Index Multiple Exchange Traded Fund Shares (''Multiple Fund Shares'') and Index Inverse Exchange Traded Fund Shares (''Inverse Fund Shares'') (collectively, the ''Fund Shares''). The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

Proposed new language is italicized; proposed deletions are in brackets.[3]

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4420. Quantitative Listing Criteria

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(a)–(i) No Change.

(j) Index Fund Shares

(1) No Change

(A) No Change

(B)(i) The term ''Index Fund Share'' includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stock, a specified portfolio of fixed income securities or a combination of the above and/or cash as defined in subparagraph (1)(B)(ii) of this rule with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock, fixed income securities or a combination thereof and/or cash with a value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (1)(B) that seeks to provide investment results, before fees and expenses, in an amount that exceeds − 200% of the percentage performance on a given day of a particular domestic equity, international or global equity or fixed income securities index or a combination thereof shall not be approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934.

(iv) For the initial and continued listing of a series of Index Fund Shares referenced in the provisions of this subparagraph (1)(B) of this rule, the following requirements must be adhered to:

Daily public Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of such series, including, as applicable, the following instruments:

a. The identity and number of shares held of each specific equity security;

b. The identity and amount held for each specific fixed income security;

c. The specific types of Financial Instruments and characteristics of such Financial Instruments; and

d. Cash equivalents and the amount of cash held in the portfolio.

If the Exchange becomes aware that the net asset value related to an Index Fund Shares included in the provisions of this subparagraph (1)(B)(ii) of this rule, is not being disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings does not occur, the Exchange shall halt trading in such series of Index Fund Share, as appropriate. The Exchange may resume trading in such Index Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public Web site

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.cchwallstreet.com.*

disclosure of portfolio holdings occurs, as appropriate.

(C) [(B)] Reporting Authority. The term ''Reporting Authority'' in respect of a particular series of Index Fund Shares means Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by Nasdaq; the term ''Reporting Authority'' shall not refer to an institution or reporting service not so designated.

(D) [(C)] US Component Stock. The term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(E) [(D)] Non-US Component Stock. The term ''Non-US Component Stock'' shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2)–(10) No Change

(k)–(o) No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Rule 4420(j) provides standards for listing Index Fund Shares (''IFSs'') on the Exchange. Nasdaq proposes to amend the definition of ''Index Fund Share'' set forth in proposed Nasdaq Rule 4420(j)(1)(B) to permit the listing and trading, or trading pursuant to UTP, of Fund Shares and to properly reflect the fact that domestic equity, international or global equity, or fixed income securities indexes or a combination thereof may be used as the underlying performance benchmark for Fund Shares. Accordingly, this proposal would enable the Exchange to list and trade Multiple Fund Shares and certain Inverse Fund Shares pursuant to Rule 19b–4(e) of the Act.[4] The Exchange also notes that the Commission has approved the original listing and trading of Fund Shares on the American Stock Exchange LLC (''Amex'').[5]

Generic Listing Standards

Nasdaq Rule 4420(j) provides standards for listing IFSs, which are securities issued by an open-end management investment company (open-end mutual fund) based on a portfolio of securities that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic securities index or fixed income index. Pursuant to Nasdaq Rule 4420(j)(1)(A), IFSs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (''NAV''). When aggregated in the same specified minimum number, IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined NAV. Consistent with Nasdaq Rule 4420(j)(9)(A)(ii), the NAV is calculated once a day after the close of the regular trading day.

The proposed revisions to Nasdaq Rule 4420(j) would allow the listing and trading of Multiple Fund Shares and Inverse Fund Shares that sought to provide investment results, before fees and expenses, in an amount not exceeding −200% of the underlying benchmark index pursuant to Rule 19b–4(e) under the Act,[6] where the other applicable generic listing standards for IFSs are satisfied. In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −200% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[7] In particular, Nasdaq Rule 4420(j)(1)(B)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −200% of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[8]

Current Nasdaq Rule 4420(j)(1)(A)(i), in pertinent part, defines the term ''Index Fund Share'' as based on a specified *foreign or domestic stock index.* In conjunction with the current proposal, the Exchange proposes to amend this definition to include domestic equity, international or global equity, or fixed income securities indexes and combinations thereof as permissible underlying performance benchmarks. The Exchange states that the proposed revision is consistent with Nasdaq Rule 4420(j) reflecting the fact that domestic equity, international or global equity, or fixed income securities indexes or a combination thereof may be used as the underlying performance benchmark for IFSs, including Fund Shares.

The Exchange believes that adopting generic listing and trading standards for Fund Shares based on domestic equity, international or global equity and/or fixed income securities indexes and applying Rule 19b–4(e) should fulfill the intended objective of that Rule by allowing those IFSs that satisfy the proposed standards to commence trading, without the need for individualized Commission approval. The proposed rules have the potential to reduce the time frame for bringing Fund Shares to market, thereby reducing the burdens on issuers and other market participants.[9]

The Commission has approved generic standards providing for the listing and trading of derivative

[4] 17 CFR 240.19b–4(e).

[5] *See* Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR–Amex–2007–131).

[6] 17 CFR 240.19b–4(e).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 240.19b–4(e).

[9] The Exchange submits that the failure of a particular Fund Share portfolio to comply with the proposed generic listing and trading standards under Rule 19b–4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular Fund Share.

products pursuant to Rule 19b–4(e) based on indexes previously approved by the Commission under Section 19(b)(2) of the Act [10] and also notes that the generic listing standards provide for indexes that have been approved by the Commission in connection with the listing of Portfolio Depository Receipts, Index Fund Shares or Index-Linked Securities. The Exchange believes that the application of that standard to Fund Shares is appropriate because the underlying securities index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives.

The Exchange notes that existing Nasdaq Rule 4420(j)(9)(B) provides continued listing standards for all IFSs. For example, where the value of the underlying index or portfolio of securities on which the IFS is based is no longer calculated or available, or in the event that the IFS chooses to substitute a new index or portfolio for the existing index or portfolio, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Nasdaq Rule 4420(j). If an IFS chose to substitute an index that did not meet any of the generic listing standards for listing of IFSs pursuant to Rule 19b–4(e) of the Act,[11] then for continued listing and trading, approval by the Commission of a separate filing pursuant to Section 19(b)(2) of the Act [12] to list and trade that IFS is required. In addition, the Exchange further notes that existing Nasdaq Rule 4420(j)(9)(A)(ii) provides that, prior to approving an IFS for listing, the Exchange will obtain a representation from the issuer that the NAV per share will be calculated daily and made available to all market participants at the same time.

The Exchange proposes to add Nasdaq Rule 4420(j)(1)(B)(iv) to provide for the halt of trading for Fund Shares if the Exchange becomes aware that the open-end investment company fails to properly disseminate the appropriate NAV to market participants at the same time. In addition, the proposed rule would also require a halt to trading if the open-end investment company issuing the Fund Shares failed to provide daily public Web site disclosure of its portfolio holdings. In particular, proposed Nasdaq Rule 4420(j)(1)(B)(iv) provides that the Exchange will halt trading in a series of Multiple Fund Shares and/or Inverse Fund Shares if the Exchange becomes aware that the open-end investment company issuing the Fund Shares fails to disseminate the appropriate NAV to all market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings.

The investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, by a specified multiple (Multiple Fund Shares) or inversely up to −200% (Inverse Fund Shares) of the underlying performance benchmark domestic equity, international or global equity and/or fixed income indexes, as applicable. Fund Shares differ from traditional exchange-traded fund shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance.

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Fund Shares may hold a combination of financial instruments, including, but not limited to: Stock index futures contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the ''Financial Instruments''). Normally, 100% of the value of the underlying portfolios for the Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the ''Money Market Instruments''). The underlying portfolios for Multiple Fund Shares may consist of a combination of securities, Financial Instruments and Money Market Instruments.

Limitation on Leverage

In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −200% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[13] In particular, Nasdaq Rule 4420(j)(1)(B)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −200% of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[14]

In connection with Multiple Fund Shares, Nasdaq Rule 4420(j)(1)(B) does not provide a similar limitation on leverage. Instead, the proposal would permit the underlying registered management investment company or fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on a given day of a particular domestic equity, international or global equity, or fixed income securities indexes or a combination thereof.

Availability of Information About Fund Shares and Underlying Indexes

Proposed Nasdaq Rule 4420(j)(1)(B)(iv) provides that the portfolio composition of a Fund will be disclosed on a public Web site. Web site disclosure of portfolio holdings that will form the basis for the calculation of the NAV by the issuer of a series of Fund Shares will be made daily and will include, as applicable, the identity and number of shares held of each specific equity security, the identity and amount held of each fixed income security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of a fund. This public Web site disclosure of the portfolio composition of a Fund, that will form the basis for the calculation of the NAV, will coincide with the disclosure of the same information to ''Authorized Participants.'' [15] Investors will have access to the current portfolio composition of a Fund through the Fund's Web site and/or at the Exchange's Web site at *http://www.nasdaqomx.com.*

Trading Halts

Existing trading halt requirements for IFSs will apply to Fund Shares. Nasdaq will halt trading in Fund Shares under the conditions specified in Nasdaq Rules 4120 and 4121, as well as subject to proposed Nasdaq Rule 4420(j)(1)(B)(iv). The conditions for a halt include a regulatory halt by the listing market. UTP trading in Fund

[10] 15 U.S.C. 78s(b)(2). *See* Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR–Nasdaq–2006–009) (Commodity-Linked Securities).

[11] 17 CFR 240.19b–4(e).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 240.19b–4(e).

[15] Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC. The format of the disclosure of portfolio holdings to Authorized Participants may differ from the format of the public Web site disclosure.

Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the calculation of the estimated NAV (''Intraday Indicative Value''), which is updated regularly during the trading day, among other values.

If Nasdaq becomes aware that the NAV or the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') with respect to a Fund Share is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

In the case of the Financial Instruments held by a Multiple or Inverse Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. The Exchange will then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares.

Additionally, Nasdaq may cease trading Fund Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading Fund Shares if the listing market delists them.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Fund Shares and highlighting the special risks and characteristics of Funds Shares as well as applicable Exchange rules.

Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Fund Shares in Baskets (and that Fund Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Fund Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Fund Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading Fund Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; and (6) trading information.

The Exchange notes that investors purchasing Fund Shares directly from a Fund will receive a prospectus. Members purchasing Fund Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that Fund Shares are subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Fund Shares of the Funds and that the NAV for the Fund Shares will be calculated after 4 p.m. (Eastern Time) each trading day.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in Fund Shares. The Exchange represents that such procedures are adequate to address any concerns about the trading of Fund Shares on Nasdaq. Trading of Fund Shares through Nasdaq will be subject to FINRA's surveillance procedures for equity securities in general and ETFs in particular.[16] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of the ISG.[17]

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[18] in general and Section 6(b)(5) of the Act[19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rules will facilitate the listing and trading of Fund Shares and will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–071. 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 (*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

[16] FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

[17] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–071 and should be submitted on or before September 25, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Pursuant to Section 19(b) of the Act[22] and Rule 19b–4 thereunder,[23] the listing and trading of a new derivative securities product is a proposed rule change that must be filed with and approved by the Commission. Rule 19b–4(e) under the Act[24] further provides that the listing and trading of a new derivative securities product by an exchange will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) under the Act[25] if the Commission has approved, pursuant to Section 19(b) of the Act, the exchange's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the exchange has a surveillance program for the product class.

The Commission believes that the Exchange's adoption of listing and trading standards for Index Fund Shares that meet the requirements of Nasdaq Rule 4420(j) should fulfill the intended objective of Rule 19b–4(e) by allowing such Index Fund Shares to commence trading on the Exchange without the need for individualized Commission approval. Accordingly, the proposed rule should allow the Exchange to bring these securities to market without delay, thereby reducing the burdens on issuers and other market participants while promoting competition.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the trading and listing pursuant to Rule 19b–4(e) of Inverse Fund Shares and Multiple Fund Shares listed pursuant to Rule 19b–4(e) on the Exchange. Among other things, the proposal would require daily public Web site disclosure of a fund's portfolio holdings and dissemination of its NAV to all market participants at the same time, or else the Exchange would be obligated to halt trading in the fund's shares. In addition, Fund Shares listed and/or traded under the proposed ''generic'' standards would be subject to existing Nasdaq rules that govern the continued listing and trading of Index Fund Shares.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved a similar proposal of another exchange,[26] and Nasdaq's proposal does not raise any novel regulatory issues. Accordingly, the Commission believes that accelerating approval of this proposal is appropriate and will enable the Exchange to amend its rules to reflect the standards for listing and trading Inverse and Multiple Fund Shares, thereby conforming Nasdaq's rules to those of other exchanges without delay.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NASDAQ–2008–071) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20517 Filed 9–3–08; 8:45 am]

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[20] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(1).

[23] 17 CFR 240.19b–4.

[24] 17 CFR 240.19b–4(e).

[25] 17 CFR 240.19b–4(c)(1).

[26] *See* Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR–Amex–2007–131). The Commission notes that it received no comments on the Amex's proposal.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58429; File No. SR–NYSE–2008–71]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 123B (Exchange Automated Order Routing System) To Allow a Member Organization To Provide Other Market Participants With Access to the Exchange on an Agency Basis

August 27, 2008.

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 August 18, 2008, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. NYSE filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend NYSE Rule 123B to set forth the requirements that would allow a member organization to provide other market participants with access to the Exchange on an agency basis for the entry and execution of orders on the Exchange.[5] The text of the proposed rule change is available at NYSE, the Commission's Public

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] NYSE Rule 54 provides that only members are permitted to ''make or accept bids or offers, consummate transactions, or otherwise transact business on the Floor for any security admitted to dealings on the [Exchange].* * *'' *See also* NYSE Rule 2.

Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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. NYSE 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

NYSE proposes to amend NYSE Rule 123B to set forth the requirements for a member or member organization (''Sponsoring Member Organization'') to provide access (''sponsored access'') to a non-member firm or customer (''Sponsored Participant'') for the entry and execution of orders on the Exchange. The Exchange seeks the proposed rule amendment to provide a uniform rule for sponsored access to the Exchange as described below.

Background

Currently, there are sponsored access provisions included in certain NYSE rules that govern specific Exchange products or facilities;[6] however, the Exchange does not have a general sponsored access rule. The Exchange therefore proposes to adopt the sponsored access rule of its affiliate exchange, NYSE Arca, Inc. (''NYSE Arca'').[7] Other exchanges, namely The NASDAQ Stock Market LLC,[8] have similarly adopted identical sponsored access provisions.[9]

Proposed NYSE Rule 123B Sponsored Access

According to the proposed rule, Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Member Organizations establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange. As more fully described below, the Sponsoring Member Organization and the Sponsored Participant must agree in writing to specific sponsorship provisions (''Sponsorship Access Agreement'') in order for the Sponsored Participant to obtain and maintain authorized access to the Exchange.[10] The first sponsorship provision of the proposed rule requires the Sponsoring Member Organization to enter into and maintain an agreement with the Exchange, designating the Sponsored Participant by name in such agreement.

The Sponsoring Member Organization also agrees to be responsible for the conduct of the Sponsored Participant and/or any person acting on its behalf or in the name of such Sponsored Participant. Further, all orders entered by the Sponsored Participant and/or any person acting on its behalf or in the name of such Sponsored Participant are binding on the Sponsoring Member Organization. Both the Sponsored Participant and the Sponsoring Member Organization agree to comply with the rules and procedures of the Exchange.

In order to ensure compliance with the Sponsorship Access Agreement, it is the responsibility of the Sponsored Participant to implement such internal controls as may be necessary to prevent unauthorized the use of and access to the Exchange facilities. Sponsored Participants will be required to establish adequate procedures and controls to monitor use and access to the Exchange by their employees, agents, and customers. The Sponsored Participant also agrees to pay to the Sponsoring Member Organization, the Exchange, or any third party, all amounts (including but not limited to exchange and regulatory fees) related to the Sponsored Participant's access to and the use of Exchange facilities when due.

The proposed rule contemplates that the Sponsored Participant may permit one or more person(s) to submit orders to the Exchange on its behalf (''Authorized Trader'').[11] The Sponsored Participant is required to maintain, keep current and provide, upon request, a list of Authorized Traders to the Sponsoring Member Organization. The Sponsoring Member Organization is required to maintain a current list of the same to be made available to the Exchange upon request.

Although the Sponsored Participant is required to familiarize its Authorized Traders with the obligations of a Sponsored Participant under the proposed rule and ensure that the Authorized Trader receives appropriate training prior to any use or access to the Exchange, it is the Sponsoring Member Organization that bears the ultimate responsibility regarding the conduct and trading activity of Authorized Traders. Specifically, the Sponsoring Member Organization must have reasonable procedures to: (a) Ensure compliance with Exchange rules and procedures; and (b) maintain, as appropriate, the physical security of any equipment on its premises for accessing the Exchange to prevent against improper access or use (including unauthorized entry of information into Exchange systems). Pursuant to the proposed rule, at the direction of the Exchange, the Sponsoring Member Organization must suspend or withdraw the status of Authorized Trader from any person whom the Exchange has determined has caused the Sponsoring Member Organization to fail to comply with Exchange Rules.

Insofar as the amendments proposed herein have been determined by the Commission to be consistent with the protection of investors and the public interest; the Exchange believes that the proposed amendments to NYSE Rule 123B to codify the requirements for sponsored access on the Exchange are necessary to align NYSE rules with what has become the industry standard.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[13] in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to and perfect the

[6] *See* NYSE MatchPoint℠ (NYSE Rule 1500) and NYSE Bonds℠ (NYSE Rule 86). The provisions of this proposed rule will not apply to NYSE Rules 1500 and 86.

[7] *See* NYSE Arca Rules 7.29 (Access) and 7.30 (Authorized Traders).

[8] *See* Securities Exchange Act Release No. 55550 (March 28, 2007), 72 FR 16389 (April 4, 2007) (SR–NASDAQ–2007–010) (amending NASDAQ Rule 4611(d) to conform its requirements to match NYSE Arca Rules 7.29 and 7.30).

[9] In adopting NYSE Arca's sponsored access rule, NASDAQ stated its intent was, ''to match the regulatory requirements imposed by other exchanges and, thereby, to promote uniform regulation of sponsored access relationships.'' *See* Securities Exchange Act Release No. 55550 (March 28, 2007) at 2, 72 FR 16389, 16390 (April 2007) (SR–NASDAQ–2007–010).

[10] Commentary .30, Section (c)(3) of proposed NYSE Rule 123B requires that the Sponsoring Member Organization provide the Exchange with a notice of consent acknowledging its responsibility for the orders, execution, and conduct of the Sponsored Participant at issue (alteration to original citation that referenced ''Section (b)(3) of proposed NYSE Rule 123B'').

[11] *See* Commentary .30, Sections (c)(2)(D) and (d) of proposed NYSE Rule 123B (alteration to original citation that referenced ''proposed NYSE Rule 123B sections (b)(2)(D) and (d)'').

[12] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (alteration to original citation that referenced ''53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (SR–PCX–2006–24) (adopting NYSE Arca Equities Rules 7.29 and 7.30)'').

[13] 15 U.S.C. 78f(b)(5).

mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B.Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [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. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.[18]

[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). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has complied with this requirement.

[17] *Id.*

[18] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2008–71 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–71 and should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20465 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58430; File No. SR–NYSE–2008–76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 2B in Order To Establish Procedures Designed To Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

August 27, 2008.

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 August 20, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 2B in order to establish procedures designed to manage potential informational advantages resulting from the affiliation between the Exchange and Archipelago Securities L.L.C., an NYSE affiliated member. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 13, 2008, NYSE Arca Inc. (''NYSE Arca'') filed with the Commission a proposed rule change to amend NYSE Arca Rule 7.31(x) (the ''PO Plus Proposal'').[3] NYSE Arca filed that rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(6)[5] thereunder, which rendered it effective upon filing with the Commission. On April 11, 2008, the Commission issued an order abrogating NYSE Arca's PO Plus Proposal (the ''Abrogation Order'').[6]

In the Abrogation Order, the Commission noted its concern regarding (i) the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders and (ii) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members.[7]

The Exchange is submitting this proposed rule change in order to address the Commission's concerns and clarify the Exchange's procedures regarding affiliated members.

a. NYSE Arca's Proposed PO Plus Order

According to its recent rule filing, NYSE Arca proposes to amend its Primary Only (''PO'') Order. The PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.[8] NYSE Arca Users submit the PO Order to NYSE Arca. In turn, NYSE Arca passes the PO Order to Archipelago Securities L.L.C. (''Arca Securities''), its outbound order routing facility. Arca Securities routes the PO Order to the primary, listing market. PO Orders are thus a form of directed order, an order type that is commonly offered by exchanges and other market centers to enable firms to discharge their obligations under Regulation NMS and other rules.[9] According to its filing, NYSE Arca intends to offer this order type, modified as PO Plus, for entry and execution throughout the trading day. Of course, by its definition, PO Orders may be routed by Arca Securities (upon instruction from NYSE Arca) to the NYSE in those instances where the NYSE is the primary, listing exchange.

b. Order Routing and Existing NYSE Rules

NYSE Rule 2B provides, in pertinent part, that:

> Without *prior SEC approval,* the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. (Emphasis added.)

Arca Securities is the approved outbound routing facility of NYSE Arca. In its Order approving the merger of the Archipelago Exchange (''ArcaEx'') with the Pacific Exchange (the ''PCX''),[10] the Commission permitted ArcaEx's holding company, Archipelago Holdings, Inc. (''Archipelago''), to own and operate Arca Securities, in its capacity as a facility of the PCX that routes orders from ArcaEx to other market centers.[11] This approval remains in effect insofar as Arca Securities acts in the capacity of a facility of NYSE Arca for the routing of orders from NYSE Arca to other market centers, including the NYSE, subject to the applicable conditions.[12] Although Arca Securities was required to discontinue its operation of the DOT function in connection with the Archipelago/NYSE merger, no restrictions other than those previously described were requested or imposed by the Commission with respect to Arca Securities' continuing role as an outbound router for NYSE Arca.[13]

Arca Securities performs a similar outbound routing function on behalf of the NYSE. On April 5, 2007, in a notice of immediate effectiveness, the Commission published the NYSE's rule change that established Arca Securities as a facility of the NYSE for purposes of routing orders to away market centers for execution in compliance with NYSE Rules and Regulation NMS.[14] Pursuant to NYSE Rule 17, Arca Securities receives its routing instructions from the NYSE and reports any such executions back to the NYSE.[15] Arca Securities has no discretion and cannot change the terms of an order or the routing instructions.[16] Moreover, each type of order is subject to the same principles governing the Exchange's authority to route orders to away market centers, namely: Use of Arca Securities for outbound routing is only available to—and is optional for—NYSE Members, the primary regulatory responsibility for Arca Securities lies with an unaffiliated SRO, and, as clarified herein, appropriate procedures are in place to manage any conflicts of interest or potential information advantages. In this capacity as a facility of the NYSE, Arca Securities receives the routing instructions from the NYSE and routes the orders to various away market centers, including NYSE Arca, for execution.

c. Record Keeping

As mentioned above, in the Abrogation Order, the Commission noted the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders.

In order to manage these concerns, with respect to orders routed to NYSE by Arca Securities, an NYSE member, in its capacity as a facility of NYSE Arca,

[3] *See* Securities Exchange Act Release No. 57377 (Feb. 25, 2008), 73 FR 11177 (February 29, 2008) (SR–NYSEArca–2008–19).

[4] 15 U.S.C. 78s(3)(A).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 57648 (Apr. 11, 2008), 73 FR 20981 (April 17, 2008) (SR–NYSEArca–2008–19) (order abrogating NYSE Arca Rule 7.31(x)).

[7] *Id.*

[8] *See* NYSE Arca Equities Rule 7.31(x).

[9] NYSE Arca's proposed PO Plus functionality is substantially similar to the ''Directed Order'' type currently offered by The NASDAQ Stock Market LLC (''Nasdaq''), which allows Nasdaq members to enter orders to be routed to a user-designated market center other than Nasdaq, without first interacting with the Nasdaq order book. *See* Securities Exchange Act Release No. 55405 (March 6, 2007), 72 FR 11069 (March 12, 2007) (SR–NASDAQ–2007–020).

[10] Following the ArcaEx-PCX merger, Archipelago merged with the NYSE and the PCX was later renamed NYSE Arca.

[11] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (order approving SR–PCX–2005–90). The Commission's approval was subject to several conditions and undertakings, specifically that: (1) Arca Securities would continue to operate and be regulated as a facility of the PCX; (2) the scope of the exception would be limited to outbound routing; (3) the primary regulatory responsibility for Arca Securities would lie with an unaffiliated SRO; and (4) the continued use of Arca Securities for outbound routing would remain optional for other PCX members.

[12] *Id.*

[13] For purposes of inbound orders in general and NYSE Arca's proposed amendment in particular, the Exchange believes that there is no functional difference between inbound orders routed by Arca Securities that previously scrape the NYSE Arca book and the PO Order, which do not. Each type of order is subject to the same principles governing NYSE Arca's authority to send, and the Exchange's authority to receive, orders routed via Arca Securities. As clarified herein, appropriate procedures are in place to manage any potential conflicts of interest or potential information advantages.

[14] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29).

[15] *See* NYSE Rule 17(b)(1).

[16] *Id.*

the Exchange notes that Arca Securities is subject to independent oversight and enforcement by the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO'') that is Arca Securities' designated examining authority. In this capacity, FINRA is responsible for examining Arca Securities with respect to its books and records and capital obligations, and shares with NYSE Regulation, Inc. (''NYSE Regulation'') the responsibility for reviewing Arca Securities' compliance with intermarket trading rules such as SEC Regulation NMS. In addition, through an agreement between FINRA and the NYSE pursuant to the provisions of Rule 17d–2 under the Act, FINRA's staff reviews for Arca Securities' compliance with other NYSE rules through FINRA's examination program. NYSE Regulation monitors Arca Securities for compliance with NYSE trading rules, subject, of course, to SEC oversight of NYSE Regulation's regulatory program.

In order to alleviate any residual concerns the Commission may have regarding the potential for conflicts of interest, the Exchange notes that NYSE Regulation has agreed with the Exchange that it will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of NYSE Arca, routing orders to the NYSE) is identified as a participant that has potentially violated NYSE or applicable SEC rules—in an easily accessible manner, so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examinations. NYSE Regulation has further agreed with the Exchange that it will provide a report to the Exchange's Chief Regulatory Officer, on at least a quarterly basis, which: (i) Quantifies all alerts (of which NYSE Regulation is aware in its tracking system) that identify Arca Securities as a participant that has potentially violated NYSE or SEC rules and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated NYSE or SEC rules.[17]

d. New Policies and Procedures.

Finally, in the Abrogation Order, the Commission noted the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members.

In response to this concern, with respect to Arca Securities being an affiliated member of the NYSE, the Exchange is proposing to amend Exchange Rule 2B. As amended, Exchange Rule 2B will require the implementation of policies and procedures that are reasonably designed to prevent Arca Securities from acting on non-public information regarding NYSE systems prior to the time that such information is made available generally to all NYSE members performing inbound order routing functions. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

Specifically, Exchange Rule 2B shall provide as follows:

> The holding company owning both the Exchange and Archipelago Securities LLC shall establish and maintain procedures and internal controls reasonably designed to ensure that Archipelago Securities, L.L.C. does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.

The Exchange believes these measures will effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated NYSE members.

e. Pilot Period

The Exchange proposes that the Commission authorize the NYSE to receive inbound routes of PO Plus Orders from Arca Securities for a pilot period of twelve months from the date of the approval of this rule filing. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[18] of the Act, in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NYSE–2008–76. This file number should be included on the subject line if e-mail is used. To help the

[17] The Exchange, NYSE Regulation, and SEC staff, may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–76 and should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20466 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58431; File No. SR–NYSEArca–2008–90]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Equities Rule 7.31(x) To Clarify the Permissible Order Entry Time and Eligibility of Its Primary Only Order and Amending NYSE Arca Equities Rule 14.3 To Establish Procedures Designed To Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

August 27, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 20, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') through its wholly-owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) amend NYSE Arca Equities Rule 7.31(x) in order to clarify the permissible order entry time and eligibility of its Primary Only Order (''PO Order'') and (ii) amend NYSE Arca Equities Rule 14.3 in order to establish procedures designed to manage potential informational advantages resulting from the affiliation between the Exchange and Archipelago Securities L.L.C. ((i) and (ii) together, the ''Proposed Rule Change''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 13, 2008, NYSE Arca filed with the Commission a proposed rule change to amend NYSE Arca Equities Rule 7.31(x) (the ''PO Plus Proposal'').[4] NYSE Arca filed that rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[5] of the Act and Rule 19b–4(f)(6)[6] thereunder, which rendered it effective upon filing with the Commission. On April 11, 2008, the Commission issued an order abrogating the PO Plus Proposal (the ''Abrogation Order'').[7]

In the Abrogation Order, the Commission noted its concern regarding (i) the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders and (ii) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members.[8]

NYSE Arca is submitting the Proposed Rule Change to re-propose the PO Plus Order and to propose a new NYSE Arca Equities Rule 14.3(e). The Proposed Rule Change is intended to provide additional flexibility and increased system functionality for NYSE Arca Users[9] by modifying the operability and eligibility of PO Orders, and to address the issues noted by the Commission in the Abrogation Order.

a. The PO Plus Order

The PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.[10] PO Orders are thus a form of directed order, an order type that is commonly used by exchange members and offered by exchanges and other market centers to enable firms to discharge their obligations under Regulation NMS and other rules.[11] This is an order functionality offered by the Exchange to its Users. NYSE Arca Users

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[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 57377 (Feb. 25, 2008), 73 FR 11177 (February 29, 2008) (SR–NYSEArca–2008–19).

[5] 15 U.S.C. 78s(3)(A).

[6] 7 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 57648 (April 11, 2008), 73 FR 20981 (April 17, 2008) (order abrogating NYSE Arca Rule 7.31(x)).

[8] *See id.*

[9] *See* NYSE Arca Equities Rule 1.1(yy) for the definition of ''User.'' Under Rule 1.1(yy), the term User means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Marketplace pursuant to NYSE Arca Equities Rule 7.29. PO Orders, similar to all other order types offered by the Exchange, are available only to authorized Users.

[10] *See* NYSE Arca Equities Rule 7.31(x).

[11] The Exchange believes that the proposed functionality is substantially similar to the ''Directed Order'' type currently offered by The NASDAQ Stock Market LLC (''Nasdaq''), which allows Nasdaq members to enter orders to be routed to a user-designated market center other than Nasdaq, without first interacting with the Nasdaq order book. *See* Securities Exchange Act Release No. 55405 (March 6, 2007), 72 FR 11069 (March 12, 2007) (SR–NASDAQ–2007–020).

submit the PO Order to NYSE Arca. In turn, NYSE Arca passes the PO Order to Archipelago Securities L.L.C. (''Arca Securities''), its outbound order routing facility. Arca Securities routes the PO Order to the primary, listing market. It is important to note that Arca Securities accepts orders only from the Exchange (in this case NYSE Arca), which in turn only accepts orders from authorized NYSE Arca Users.

Users may enter PO Orders until a cut-off time established from time to time by the Exchange. Currently, the Exchange restricts PO Orders to participation in the primary, listing market opening. In an effort to enhance order execution opportunities for its Users, the Exchange proposes to modify the PO Order type so that PO Orders may be entered at any time and to offer an order modifier for Users to designate PO Orders that are eligible for entry and execution throughout the trading day.

Under the Proposed Rule Change, a PO Order may be entered at any time [12] and will be immediately routed to the primary, listing market for execution. If the order is not immediate-or-cancel, the order is not returned to the NYSE Arca book; rather it remains at the venue to which it is routed, until executed or cancelled that day. In instances where a symbol is halted, the PO Order will remain at the primary, listing market until it is cancelled or the symbol is re-opened. PO Orders eligible for participation in the primary, listing market's opening must be entered before 6:28 a.m. (Pacific Time). A PO Order entered for participation in the primary, listing market re-opening after a trading halt must be entered after trading was halted and before the Re-Opening Time. Otherwise, PO Orders eligible for participation in the primary, listing market at all other times must be marked with the modifier ''PO+''.

The proposed changes to the PO Order type will provide additional flexibility and functionality to the Exchange's system and its Users that wish to use the system to comply with their obligations to avoid trading through any Protected Quotation within the meaning of Rule 600(b)(58) of Regulation NMS.[13] PO Orders may be designated as intermarket sweep orders thereby permitting the executing party to execute at the primary, listing market without checking away market centers for any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act). Of course, a broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

b. Order Routing and Existing NYSE Arca Rules

In its Order approving the merger of the Archipelago Exchange (''ArcaEx'') with the Pacific Exchange (the ''PCX''),[14] the Commission permitted ArcaEx's holding company, Archipelago Holdings, Inc. (''Archipelago''), to own and operate Arca Securities, in its capacity as a facility of the PCX that routes orders from ArcaEx to other market centers.[15] The Exchange believes that this approval remains in effect insofar as Arca Securities acts in the capacity of a facility of NYSE Arca for the routing of orders from NYSE Arca to other market centers, subject to the applicable conditions.[16]

In its Order granting this approval, the Commission also recognized the distinction between Arca Securities' role as a broker-dealer performing the DOT function and Arca's role as an Exchange facility in connection with outbound routing:

> Archipelago Securities also provides the DOT function *in addition to its Outbound Router* function * * * PCX requests * * * an exception for Archipelago Securities to permit Archipelago to continue to own all of its ownership interest in and operate the DOT function of Archipelago Securities on a pilot basis until the earlier of (1) a period of 60 days following the closing of the Merger, and (2) the closing date of the proposed merger of Archipelago and the NYSE * * * (Emphasis added.)[17]

Significantly, although Arca Securities was required to discontinue its operation of the DOT function in connection with the Archipelago/New York Stock Exchange (''NYSE'') merger, no restrictions other than those previously described above were requested or imposed by the Commission with respect to Arca Securities' continuing role as an outbound router for the Exchange. Accordingly, NYSE Arca does not believe that outbound routing of PO Orders by Arca Securities to the NYSE, as an approved facility of the Exchange, is inconsistent with existing NYSE Arca rules.[18]

Arca Securities performs a similar outbound routing function on behalf of the NYSE. On April 5, 2007, in a notice of immediate effectiveness, the Commission published the NYSE's rule change that established Arca Securities as a facility of the NYSE for purposes of routing orders to away market centers for execution in compliance with NYSE Rules and Regulation NMS.[19] Pursuant to NYSE Rule 17, Arca Securities receives its routing instructions from the NYSE and reports any such executions back to the NYSE.[20] Arca Securities has no discretion and cannot change the terms of an order or the routing instructions.[21] Moreover, each type of order is subject to the same principles governing the NYSE's authority to route orders to away market centers, namely: Use of Arca Securities for outbound routing is only available to—and is optional for—NYSE Members, the primary regulatory responsibility for Arca Securities lies with an unaffiliated SRO, and, as clarified herein, appropriate procedures are in place to manage any conflicts of interest or potential information advantages. In this capacity as a facility of the NYSE, Arca Securities receives the routing instructions from the NYSE and routes the orders to various away market centers, including NYSE Arca, for execution.

c. Record Keeping

As mentioned above, in the Abrogation Order, the Commission noted the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders.

[12] Users would be able to enter PO Orders into the system for execution during any of the Exchange's trading sessions (Opening, Core and Late Sessions).

[13] 17 CFR 242.600(b)(58).

[14] Following the ArcaEx-PCX merger, Archipelago merged with the NYSE and the PCX was later renamed NYSE Arca.

[15] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (order approving SR–PCX–2005–90). The Commission's approval was subject to several conditions and undertakings, specifically that: (1) Arca Securities would continue to operate and be regulated as a facility of the PCX, (2) the scope of the exception would be limited to outbound routing, (3) the primary regulatory responsibility for Arca Securities would lie with an unaffiliated SRO and (4) the continued use of Arca Securities for outbound routing would remain optional for other PCX members. With respect to routing of PO Orders by Arca Securities, NYSE Arca believes that these conditions and undertakings continue to be fulfilled.

[16] *Id.*

[17] *Id.*

[18] For purposes of routing in general and this proposal in particular, the Exchange believes that there is no functional difference between routing orders that previously scraped the NYSE Arca book and routing the PO Order, which does not. Each type of order is subject to the same principles governing the Exchange's authority to route orders to away market centers, namely: Use of Arca Securities for outbound routing is optional for NYSE Arca Users, the primary regulatory responsibility for Arca Securities lies with an unaffiliated SRO, and, as clarified herein, appropriate procedures are in place to manage any potential conflicts of interest or potential information advantages.

[19] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29).

[20] *See* NYSE Rule 17(b)(1).

[21] *Id.*

In order to manage these concerns, with respect to orders routed to NYSE Arca by Arca Securities in its capacity as a facility of the NYSE, the Exchange notes that Arca Securities is subject to independent oversight and enforcement by the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO'') that is Arca Securities' designated examining authority. In this capacity, FINRA is responsible for examining Arca Securities with respect to its books and records and capital obligations, and shares with NYSE Regulation, Inc. (''NYSE Regulation'') the responsibility for reviewing Arca Securities' compliance with intermarket trading rules such as SEC Regulation NMS. In addition, through an agreement between FINRA and NYSE Arca pursuant to the provisions of Rule 17d–2 under the Act,[22] FINRA's staff reviews for Arca Securities' compliance with other NYSE Arca rules through FINRA's examination program. NYSE Regulation monitors Arca Securities for compliance with NYSE Arca trading rules, subject, of course, to SEC oversight of NYSE Regulation's regulatory program.

In order to alleviate any residual concerns the Commission may have regarding the potential for conflicts of interest, the Exchange notes that NYSE Regulation has agreed with the Exchange that it will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of the NYSE, routing orders to NYSE Arca) is identified as a participant that has potentially violated NYSE Arca or applicable SEC rules—in an easily accessible manner, so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examinations. NYSE Regulation has further agreed with the Exchange that it will provide a report to the Exchange's Chief Regulatory Officer, on at least a quarterly basis, which: (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE Arca or SEC rules and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated NYSE Arca or SEC rules.[23]

d. New Policies and Procedures

Finally, in the Abrogation Order, the Commission noted the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members.

In response to this concern, with respect to Arca Securities being an affiliated member of NYSE Arca, the Exchange is proposing to add new Rule 14.3(e). New Rule 14.3(e) will require the implementation of policies and procedures that are reasonably designed to prevent Arca Securities from acting on non-public information regarding NYSE Arca systems prior to the time that such information is made available generally to all NYSE Arca members performing inbound routing functions. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

Specifically, new Rule 14.3(e) shall provide as follows:

> The holding company owning both the Exchange and Archipelago Securities, L.L.C. shall establish and maintain procedures and internal controls reasonably designed to ensure that Archipelago Securities, L.L.C. does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.

The Exchange believes these measures will effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated NYSE Arca members.

e. Pilot Period

The Exchange proposes that the Commission authorize NYSE Arca to receive inbound routes from Arca Securities (in its capacity as a facility of NYSE, routing orders to NYSE Arca) for a pilot period of twelve months from the date of the approval of this rule filing. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[24] of the Act, in general, and furthers the objectives of Section 6(b)(5),[25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

[22] 17 CFR 240.17d–2.

[23] The Exchange, NYSE Regulation, and SEC staff, may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSEArca–2008–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–90 and should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20467 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58437; File No. SR–NYSEArca–2008–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To List and Trade the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes Due 2038

August 28, 2008.

I. Introduction

On July 17, 2008, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 list and trade the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes Due 2038. The proposed rule change was published for comment in the **Federal Register** on July 29, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to list and trade shares of the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes Due 2038 (''Notes''), which are linked to the MSCI Gulf Cooperation Council (GCC) Countries ex-Saudi Arabia Net Total Return Index℠ (U.S. dollar) (''Index''), under NYSE Arca Equities Rule 5.2(j)(6), which includes the Exchange's listing standards for Equity Index-Linked Securities.[4] The Notes are senior unsecured debt obligations of Barclays Bank PLC (''Barclays''). The Index is comprised of all of the equity securities (each an ''Index Component'' and, collectively, the ''Index Components'') that are included in the following five individual country indices (each a ''Country Index'' and, collectively, the ''Country Indices''): (1) MSCI Bahrain Index℠; (2) MSCI Kuwait Index℠; (3) MSCI Oman Index℠; (4) MSCI Qatar Index℠; and (5) MSCI United Arab Emirates Index℠. Each Country Index is a free float-adjusted market capitalization index that is designed to measure the market performance, including price performance and income from dividend payments, of equity securities in the country it represents. The Index and the Country Indices are calculated and maintained by MSCI, Inc.

The Exchange submitted the proposed rule change because the Index does not meet all of the ''generic'' listing requirements of NYSE Arca Equities Rule 5.2(j)(6) applicable to the listing of Equity Index-Linked Securities. Specifically, the Index meets all such requirements except for those set forth in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) [5] and (v).[6] The Exchange represented that: (1) Except for NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and (v), the Notes currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(6) applicable to Equity Index-Linked Securities; (2) the continued listing standards under NYSE Arca Equities Rule 5.2(j)(6) applicable to Equity Index-Linked Securities shall apply to the Notes; and (3) Barclays is required to comply with Rule 10A–3 under the Act [7] for the initial and continued listing of the Notes. In addition, the Exchange represented that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities including, but not limited to, requirements relating to the dissemination of key information such as the Equity Reference Asset value and Intraday Indicative Value, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58208 (July 22, 2008), 73 FR 43968.

[4] Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (''Equity Reference Asset'').

[5] NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(ii) provides that each component security of the underlying index shall have trading volume in each of the last six months of not less than 1,000,000 shares per month, except that for each of the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. The Exchange represented that as of July 17, 2008, in each of the prior six months, 87.995% of the Index had a trading volume of 1,000,000 shares, and 8.79% of the bottom 10% of the Index had a trading volume of 500,000 shares.

[6] NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) provides that all component securities of the underlying index shall be either (A) securities (other than foreign country securities and American Depositary Receipts (''ADRs'')) that are (x) issued by an Act reporting company or by an investment company registered under the Investment Company Act of 1940, which in each case is listed on a national securities exchange, and (y) an ''NMS stock'' (as defined in Rule 600 of Regulation NMS) or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (''ISG'') or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index. *See* Securities Exchange Act Release No. 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR–NYSEArca–2008–70) (approving certain amendments to NYSE Arca Equities Rule 5.2(j)(6)(B)(I) and, as a result, the renumbering of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(vi) to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), among other subsections).

[7] 17 CFR 240.10A–3.

Securities, generally, and Equity Index-Linked Securities, in particular.[8]

The Exchange stated that it might be unable to obtain surveillance information from the Middle East Exchanges regarding the component stocks, but that it intended to use its existing surveillance procedures applicable to derivative products to monitor trading in the Notes. The Exchange represented that such procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules. The Exchange also noted that its current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange added that it may obtain information via ISG from other exchanges that are members of ISG.[9]

Notwithstanding the Notes' inability to meet the requirements of NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and (v), the Exchange stated that the Index is sufficiently broad-based in scope and, as such, less susceptible to potential manipulation, insofar as the Index contains 105 companies, listed in five countries, with no one Middle East Exchange listing greater than 50% of the Index Components. The Exchange further stated that no one Index Component dominates the underlying Index.

Detailed descriptions of the Notes, the Index (including the methodology used to determine the composition of the Index), fees, redemption procedures and payment at redemption, payment at maturity, taxes, and risk factors relating to the Notes are available in the Prospectus [10] or on the Web site for the Notes (*http://www.barclays.com*), as applicable.

III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Notes is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Although NYSE Arca Equities Rule 5.2(j)(6)(B)(I) permits the Exchange to approve the listing and trading of Equity Index-Linked Securities, the Notes do not meet all of the generic listing requirements thereunder because the components of the Index do not meet the requirements in NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and (v).[13] NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(ii) provides that each component security of the underlying index shall have trading volume in each of the last six months of not less than 1,000,000 shares per month, except that for each of the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. According to the Exchange, as of July 17, 2008, in each of the prior six months, 87.995% of the Index had a trading volume of 1,000,000 shares, and 8.79% of the bottom 10% of the Index had a trading volume of 500,000 shares. Such percentages do not meet the minimum required thresholds and, therefore, the Notes cannot be listed and traded pursuant to the generic listing standards of NYSE Arca Equities Rule 5.2(j)(6)(B)(I) applicable to Equity Index-Linked Securities.

In addition, NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) provides that all component securities of the underlying index shall be either (A) securities (other than foreign country securities and ADRs) that are (x) issued by an Act reporting company or by an investment company registered under the Investment Company Act of 1940, which, in each case, is listed on a national securities exchange, and (y) an ''NMS stock'' (as defined in Rule 600 of Regulation NMS) or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of ISG or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index. According to the Exchange, in the case of the Notes, the components underlying the Index are foreign country securities that trade on foreign trading markets with which the Exchange has not entered into any comprehensive surveillance sharing agreements. In addition, the Exchange stated that none of the Middle East Exchanges are members of ISG.

The Commission notes that the Exchange represents that it has attempted, but to date has not been able, to enter into comprehensive surveillance sharing agreements with the Middle East Exchanges. The Commission further notes that, in certain limited circumstances, it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks for which a national securities exchange has not entered into a comprehensive surveillance sharing agreement with the relevant foreign exchange.[14] The Exchange has represented that it intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Notes and that such procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules.

In addition, the Exchange has represented that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities including, but not limited to, requirements relating to the dissemination of key information such as the Equity Reference Asset value and Intraday Indicative Value, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked

[8] *See, e.g.*, Securities Exchange Act Release Nos. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR–NYSEArca–2007–92); 57132 (January 11, 2008), 73 FR 3300 (January 17, 2008) (SR–NYSEArca–2007–125); 56838 (November 26, 2007), 72 FR 67774 (November 30, 2007) (SR–NYSEArca–2007–118); 56879 (December 3, 2007) 72 FR 69271 (December 7, 2007) (SR–NYSEArca–2007–110); and 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63).

[9] For a list of the current members and affiliate members of ISG, see *http://www.isgportal.com.*

[10] *See* Barclay's Prospectus, as amended, filed pursuant to Rule 424(b)(2) under the Act (File No. 333–145845).

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* notes 5 and 6, respectively, and accompanying text.

[14] *See, e.g.*, Securities Exchange Act Release No. 54944 (December 15, 2006), 71 FR 77432 (December 26, 2006) (SR–NYSE–2006–69) (approving the listing and trading of exchange-traded notes linked to the MSCI India Equities Index).

Securities, generally, and Equity Index-Linked Securities, in particular.[15]

The Commission believes that the listing and trading of the Notes is consistent with the Act. The Commission notes that, based on the Exchange's representations, the Notes otherwise meet all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(6). The Commission notes that the Index is composed of all of the equity securities (103 stocks) that are included in five separate Country Indices and has a total market capitalization of over $100 billion. The Commission further notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria.[16]

For the foregoing reasons, the Commission believes that the proposal to list and trade the Notes is consistent with the Act and finds good cause for approving the proposed rule change. This order is based on the Exchange's representations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2008–77) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–20470 Filed 9–3–08; 8:45 am]

BILLING CODE 8010–01–P

[15] *See supra* note 8.

[16] *See* Securities Exchange Act Release No. 57349 (February 19, 2008), 73 FR 10084 (February 25, 2008) (SR–NYSEArca–2008–22). *See also* Securities Exchange Act Release Nos. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR–NYSE–2007–46); and 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR–NYSEArca–2007–111).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11411]

Florida Disaster #FL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–1785–DR), dated 08/24/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 and continuing.

Effective Date: 08/24/2008.

Physical Loan Application Deadline Date: 10/23/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/25/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/24/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Brevard, Monroe, Okeechobee, Saint Lucie.

Contiguous Counties (Economic Injury Loans Only):

Collier, Glades, Hendry, Highlands, Indian River, Martin, Miami-Dade, Orange, Osceola, Palm Beach, Polk, Seminole, Volusia.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage and for economic injury is 11411.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–20448 Filed 9–3–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11409 and #11410]

Florida Disaster #FL–00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1785–DR), dated 08/26/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 and continuing.

Effective Date: 08/26/2008.

Physical Loan Application Deadline Date: 10/27/2008.

EIDL Loan Application Deadline Date: 05/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of FLORIDA , dated 08/26/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Hendry, Okeechobee, Saint Lucie, Volusia.

Contiguous Counties: (Economic Injury Loans Only):

Florida: Broward, Charlotte, Collier, Flagler, Glades, Highlands, Lake, Lee, Marion, Martin, Palm Beach, Polk, Putnam.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–20449 Filed 9–3–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11409 and #11410]

Florida Disaster #FL–00035

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1785–DR), dated 08/26/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 and continuing.

Effective Date: 08/26/2008.

Physical Loan Application Deadline Date: 10/27/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/26/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
Brevard.

Contiguous Counties (Economic Injury Loans Only):
Florida: Indian River, Orange, Osceola, Seminole, Volusia.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 114098 and for economic injury is 114100.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–20450 Filed 9–3–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11264 and #11265]

Iowa Disaster Number IA–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 13.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1763–DR), dated 05/27/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/25/2008 through 08/13/2008.

Effective Date: 08/26/2008.

Physical Loan Application Deadline Date: 09/29/2008.

EIDL Loan Application Deadline Date: 02/27/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Iowa, dated 05/27/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Humboldt, Howard, Jackson, Poweshiek.

All other counties contiguous to the above named primary counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–20447 Filed 9–3–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11393]

New Mexico Disaster Number NM–00009

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–1783–DR), dated 08/14/2008.

Incident: Severe Storms and Flooding.

Incident Period: 07/26/2008 through 08/20/2008.

Effective Date: 08/20/2008.

Physical Loan Application Deadline Date: 10/14/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Mexico, dated 08/14/2008, is hereby amended to establish the incident period for this disaster as beginning 07/26/2008 and continuing through 08/20/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–20452 Filed 9–3–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0453]

Telegraph Hill Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telegraph Hill Partners SBIC, L.P., 360 Post Street, Suite 601, San Francisco, CA 94108, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Telegraph Hill Partners SBIC, L.P. proposes to provide equity/debt security financing to LDR Holding Corporation, 4030 W. Braker Lane, Suite 360, Austin, TX 78759. The financing is contemplated for working capital and growth purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telegraph Hill Partners II, L.P., THP II Affiliates Fund, L.P., THP Affiliates Fund, L.P., all Associates of Telegraph Hill Partners SBIC, L.P., in the aggregate own more

than ten percent of LDR Holding Corporation, and therefore LDR Holding Corporation is considered an Associate of Telegraph Hill Partners SBIC as described in 13 CFR 107.50.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: August 12, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8–20458 Filed 9–3–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

[Docket No. OST–2007–27407]

National Surface Transportation Infrastructure Financing Commission

AGENCY: Department of Transportation (DOT).

ACTION: Notice of meeting location and time.

SUMMARY: This notice lists the location and time of the fourteenth and fifteenth meetings of the National Surface Transportation Infrastructure Financing Commission.

FOR FURTHER INFORMATION CONTACT: John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice dated March 12, 2007, and in accordance with the requirements of the Federal Advisory Committee Act (''FACA'') (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU'') (Pub. L. 109–59, 119 Stat. 1144), the U.S. Department of Transportation (the ''Department'') issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the ''Financing Commission''). Section 11142(a) of SAFETEA–LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing surface transportation infrastructure.

Notice of Meeting Location and Time

The Commissioners have agreed to hold their fourteenth meeting in two sessions, from 6:30 p.m. to 9 p.m. on Tuesday, September 16, 2008, and from 8:30 a.m. to 4 p.m. on Wednesday, September 17, 2008. The Commissioners have also agreed to hold their fifteenth meeting in two sessions, from 8:30 a.m. to 4 p.m. on Tuesday, October 21, 2008, and from 8:30 a.m. to 4 p.m. on Wednesday, October 22, 2008. The session of the fourteenth meeting on September 17, 2008, is scheduled to take place at the office of the American Public Transportation Association (APTA), at 1666 K Street, NW., Eleventh Floor, Washington, DC 20006. The other three sessions, on September 16, 2008, October 21, 2008, and October 22, 2008, are scheduled to take place at the office of the Information Technology and Innovation Foundation (ITIF), 1250 I (''Eye'') Street, NW., Suite 200, Washington, DC 20005. Each session will be open to the public.

If you need accommodations because of a disability or require additional information to attend any of these meetings, please contact John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

Issued on this 28th day of August, 2008.

John V. Wells,

Chief Economist, U.S. Department of Transportation, Designated Federal Official.

[FR Doc. E8–20493 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2007–0108]

National Task Force To Develop Model Contingency Plans To Deal With Lengthy Airline On-Board Ground Delays

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

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a meeting of the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays.

DATES: The Task Force meeting is scheduled for September 22, 2008, from 8:30 a.m. to 5 p.m., Eastern Time.

ADDRESSES: The Task Force meeting will be held at the U.S. Department of Transportation (U.S. DOT), 1200 New Jersey Avenue, SE., Washington, DC, in the Oklahoma City Conference Room on the lobby level of the West Building.

FOR FURTHER INFORMATION OR TO CONTACT THE DEPARTMENT CONCERNING THE TASK FORCE: Livaughn Chapman, Jr., or Kathleen Blank-Riether, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W–96–429, Washington, DC 20590–0001; *Phone:* (202) 366–9342; *Fax:* (202) 366–7152; *e-mail: Livaughn.Chapman@dot.gov,* or *Kathleen.Blankriether@dot.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the General Services Administration regulations covering management of Federal advisory committees, 41 CFR part 102–3, this notice announces a meeting of the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays. The meeting will be held on September 22, 2008, between 8:30 a.m. and 5 p.m. at the U.S. Department of Transportation (U.S. DOT), 1200 New Jersey Avenue, SE., Washington, DC, in the Oklahoma City Conference Room on the lobby level of the West Building.

DOT's Office of Inspector General recommended, in its audit report, entitled ''Actions Needed to Minimize Long, On-Board Flight Delays,'' issued on September 25, 2007, that the Secretary of Transportation establish a national task force of airlines, airports, and the Federal Aviation Administration (FAA) to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and airports to share facilities and make gates available in an emergency. To effectuate this recommendation, on January 3, 2008, the Department, consistent with the requirements of the FACA, established the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays. The first meeting of the Task Force took place on February 26, 2008. The September 22, 2008, meeting will be the sixth meeting of the task force.

The agenda topics for the September 22, 2008, meeting will include a continuation of the final review and discussion of the draft model contingency planning document for dealing with lengthy tarmac delays that was developed by the Contingency Plan Working Group, the working group that is tasked with reviewing existing airline and airport contingency plans for extended tarmac delays for best practices and developing a model contingency plan.

Attendance is open to the public, and time will be provided for comments by members of the public. Since access to the U.S. DOT headquarters building is controlled for security purposes, any member of the general public who plans to attend this meeting must notify the Department contact noted above no later than ten (10) calendar days prior to the meeting. Attendance will be necessarily limited by the size of the meeting room.

Members of the public may present written comments at any time and, at the discretion of the Chairman and time permitting, oral comments at the meeting. Any oral comments permitted must be limited to agenda items and will be limited to five (5) minutes per person. Members of the public who wish to present oral comments must notify the Department contact noted above via e-mail at least ten (10) calendar days prior to the meeting that they wish to attend and present oral comments. For the September 22, 2008, meeting, no more than one hour will be set aside for oral comments. Although written material may be filed in the docket at any time, comments regarding upcoming meeting topics should be sent to the Task Force docket, (10) calendar days prior to the meeting. Members of the public may also contact the Department contact noted above to be placed on the Task Force mailing list.

Persons with a disability requiring special accommodations, such as an interpreter for the hearing impaired, should get in touch with the Department contact noted above at least seven (7) calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations covering management of Federal advisory committees.

Issued on: August 27, 2008.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement & Proceedings, U.S. Department of Transportation.

[FR Doc. E8–20485 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2006–25756]

Commercial Driver's License (CDL) Standards; Volvo Trucks North America, Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew Volvo Trucks North America's (Volvo) exemption for eight of its drivers to enable them to test-drive commercial motor vehicles (CMVs) in the United States without a commercial driver's license (CDL) issued by one of the States. FMCSA requested comment on the renewal of the exemption, but received no comments.

DATES: This exemption is effective from February 4, 2008 through February 4, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; *Telephone:* 202–366–4325. *e-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant or renew an exemption from the CDL requirements in 49 CFR 383.23 for a maximum two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA evaluated Volvo's application on its merits and decided to grant the renewal of the exemption for eight of Volvo's engineers and technicians for a two-year period, effective February 4, 2008, as previously announced in the **Federal Register** (73 FR 6552, February 4, 2008).

Comments

The FMCSA received no response to its request for public comments published in the **Federal Register** on February 4, 2008 (73 FR 6552).

Terms and Conditions for the Exemption

Based upon its evaluation of the application for an exemption, FMCSA granted Volvo a renewal of the exemption from the Federal CDL requirement in 49 CFR 383.23 for eight drivers (Christer Milding, Jonas Gustafsson, Sten-Ake Sandberg, Daniel Kanebratt, Urban Walter, Fredrik Wattwil, Jonas Nilsson, and Bjorn Nyman) to test-drive CMVs within the U.S., subject to the following terms and conditions: (1) That these drivers are subject to drug and alcohol testing regulations, including testing, as provided in 49 CFR part 382, (2) that these drivers are subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the U.S., (3) that these drivers keep a copy of the exemption in the vehicle they are driving at all times, (4) that Volvo notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving one of the exempted drivers, and (5) that Volvo notify FMCSA in writing if any driver is convicted of a disqualifying offense described in section 383.51 or 391.15 of the FMCSRs.

The exemption will be revoked if: (1) The drivers for Volvo fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: August 27, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20511 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2008–0266]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 25 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before October 6, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2008–0266 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 24 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Larry W. Barnes

Mr. Barnes, age 58, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right is eye is 20/20 and in the left, 20/100. Following an examination in 2008 his optometrist noted, ''It is my opinion that this life-long amblyopia in Mr. Barnes' left eye in no way affects his ability to drive and operate a commercial vehicle.'' Mr. Barnes reported that he has driven straight trucks for 11 years, accumulating 13,200 miles. He holds a Class A Commercial Driver's License (CDL) from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rick A. Benevides

Mr. Benevides, 57, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 and in the left, 20/100. Following an examination in 2008, his ophthalmologist noted, ''Given that Mr. Benevides is so well accustomed to his vision and has had no difficulty with driving, I believe that his visual status is safe for him to operate a commercial vehicle.'' Mr. Benevides reported that he has driven straight trucks for 8 years, accumulating 560,000 miles and tractor-trailer combinations for 30 years, accumulating 2.1 million miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jack E. Benjamin

Mr. Benjamin, 55, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''It is my medical opinion that Jack has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Benjamin reported that he has driven straight trucks for 35 years, accumulating 560,000 miles, tractor-trailer combinations for 35 years, accumulating 997,500 miles, and buses for 35 years, accumulating 327,985 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows one crash in which he was cited for driving too fast for road conditions, and no convictions for moving violations in a CMV.

Allen S. Bush

Mr. Bush, 50, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2008 his ophthalmologist noted, ''I do feel that his vision is sufficient to perform the driving task to operate a commercial vehicle.'' Mr. Bush reported that he has driven straight trucks for 30 years, accumulating 180,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Todd A. Chapman

Mr. Chapman, 38, has had nystagmus and amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, count-finger vision. Following an examination in 2008, his optometrist noted, ''It is my medical opinion that Mr. Chapman has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Chapman reported that he has driven straight trucks for 5 years, accumulating 175,000 miles and tractor-trailer combinations for 19 years, accumulating 475,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Delone W. Dudley

Mr. Dudley, 49, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in the left, 20/20. Following an examination in 2008, his ophthalmologist noted, ''I believe that Mr. Dudley has sufficient vision to operate a commercial vehicle.'' Mr. Dudley reported that he has driven straight trucks for 20 years, accumulating 170,000 miles and tractor-trailer combinations for 3½ years, accumulating 29,750 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Irvin L. Eaddy

Mr. Eaddy, 59, has had open angle glaucoma since 1996. The best corrected visual acuity in his right eye is 20/20 and in the left, light perception. Following an examination in 2008, his optometrist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to

operate a commercial vehicle.'' Mr. Eaddy reported that he has driven tractor-trailer combinations for 23 years, accumulating 2.8 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 9 mph.

Herman Hicks

Mr. Hicks, 50, has reduced peripheral vision in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/30. The horizontal field of vision in his right eye is 120 degrees and in the left, 68 degrees. Following an examination in 2008, his ophthalmologist noted, ''I feel in my medical opinion that Mr. Herman Hicks has sufficient vision to properly operate a commercial vehicle and should be granted an exception for his left eye defect.'' Mr. Hicks reported that he has driven straight trucks for 24 years, accumulating 264,000 miles. He holds a Class C operator's license from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ralph Landers

Mr. Landers, 40, has had optic nerve defect in his right eye since birth. The best corrected visual acuity in his right eye is 20/80 and in the left, 20/25. Following an examination in 2008, his optometrist noted, ''Mr. Lander's vision is sufficient to drive a commercial vehicle and his vision should be assessed yearly to insure he can maintain present vision for driving.'' Mr. Landers reported that he has driven straight trucks for 12 years, accumulating 720,000 miles, and buses for 2 years, accumulating 1,800 miles. He holds a Class C operator's license from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeromy W. Leatherman

Mr. Leatherman, 29, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2008, his optometrist noted, ''In my opinion, Jeromy has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Leatherman reported that he has driven straight trucks for 11 years, accumulating 660,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ernest B. Martin

Mr. Martin, 52, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''Mr. Martin has a satisfactory level of vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Martin reported that he has driven straight trucks for 1 year, accumulating 3,200 miles, tractor-trailer combinations for 3½ years, accumulating 252,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows one crash, for which he was cited, and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 10 mph.

Mark L. McWhorter

Mr. McWhorter, 46, has complete loss of vision in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''Mr. McWhorter's vision is stable and it is my professional opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle, so long as he has side mirrors or both sides of the vehicle.'' Mr. McWhorter reported that he has driven tractor-trailer combinations for 6½ years, accumulating 585,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles D. Messier

Mr. Messier, 45, has loss of vision in his right eye due to lymphoma that occurred in 2005. The visual acuity in his right eye is count-finger-vision and in the left, 20/30. Following an examination in 2008, his ophthalmologist noted, ''Patient has sufficient vision to operate a commercial vehicle.'' Mr. Messier reported that he has driven straight trucks for 22 years, accumulating 1.7 million miles, tractor-trailer combinations for 12 years, accumulating 1.2 million miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Raymond C. Miller

Mr. Miller, 42, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2008, his ophthalmologist noted, ''It is my medical decision that Raymond Miller does have sufficient vision to drive a commercial vehicle.'' Mr. Miller reported that he has driven straight trucks for 24 years, accumulating 66,000 miles, tractor-trailer combinations for 3 years, accumulating 750 miles, and buses for 18 years, accumulating 21,600 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dennis E. Palmer, Jr.

Mr. Palmer, 27, has loss of vision in his left eye due to an optic nerve injury that occurred in 1998. The visual acuity in his right is eye is 20/20 and in the left, light perception. Following an examination in 2008 his ophthalmologist noted, ''It is my medical opinion that Mr. Palmer has sufficient vision to drive a commercial vehicle.'' Mr. Palmer reported that he has driven straight trucks for 6 years, accumulating 96,000 miles. He holds a Class 2 CDL from Connecticut. This allows him to drive non-commercial vehicles with a gross weight of 10,000 pounds or less. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary W. Phelps

Mr. Phelps, 49, has had a prosthetic left eye since childhood due to a traumatic injury. The best corrected visual acuity in his right eye is 20/25. Following an examination in 2008, his ophthalmologist noted, ''I feel that Mr. Gary Phelps has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Phelps reported that he has driven straight trucks for 27 years, accumulating 1.1 million miles and tractor-trailer combinations for 10 years, accumulating 100,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin L. Quastad

Mr. Quastad, 44, has loss of vision in his right eye due to a traumatic injury sustained in 1984. The visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''In my opinion, Kevin meets the vision standard to perform the driving tasks required to operate a commercial

vehicle.'' Mr. Quastad reported that he has driven straight trucks for 28 years, accumulating 560,000 miles and tractor-trailer combinations for 24 years, accumulating 600,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John E. Rains

Mr. Rains, 41, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right is eye is 20/15 and in the left, 20/80. Following an examination in 2008 his ophthalmologist noted, ''In my opinion, Mr. Rains has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Rains reported that he has driven straight trucks for 19 years, accumulating 380,000 miles. He holds an operator's license from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James D. St. Peter

Mr. St. Peter, 43, has had optic nerve atrophy in his right eye since birth. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''Yes, I certify that James St. Peter has sufficient vision to operate and do tasks of driving a commercial vehicle on the highway.'' Mr. St. Peter reported that he has driven straight trucks for 10 years, accumulating 300,000 miles and tractor-trailer combinations for 8 years, accumulating 307,200 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael Sutton

Mr. Sutton, 50, has loss of vision in his right eye due to a traumatic injury sustained in 1981. The visual acuity in his right is eye is 20/400 and in the left, 20/25. Following an examination in 2008 his optometrist noted, ''In my medical opinion, you do have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sutton reported that he has driven straight trucks for 18 years, accumulating 225,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Sylvester Silver

Mr. Silver, 53, has a prosthetic left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''Mr. Silver's current ocular health and visual fields is excellent. His present visual status is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Silver reported that he has driven buses for 18 years, accumulating 1.2 million miles. He holds a Class B CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wade D. Taylor

Mr. Taylor, 46, has a prosthetic left eye. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''At this time, I have educated Mr. Taylor of the findings of today's exam and have found that his vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Taylor reported that he has driven straight trucks for 3 years, accumulating 84,000 miles. He holds a Class E operator's license from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William R. Thomas

Mr. Thomas, 57, has loss of vision in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2008, his ophthalmologist noted, ''Therefore, in my medical opinion since this patient has been driving for so long and has had this degree of vision at a stable fashion since he has been a child I do feel that he does apparently have sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Thomas reported that he has driven straight trucks for 26 years, accumulating 1 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terrence L. Trautman

Mr. Trautman, 58, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''I certify that he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Trautman reported that he has driven straight trucks for 35 years, accumulating 350,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David Vallier

Mr. Vallier, 46, has had alternating exotropia in his eyes since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''Has sufficient vision to operate a commercial vehicle.'' Mr. Vallier reported that he has driven straight trucks for 20 years, accumulating 3.1 million miles and tractor-trailer combinations for 15 years, accumulating 1.5 million miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business October 6, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: August 27, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–20510 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2008–0083]

Final Text of the Voluntary Tanker Agreement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Publication of Final Text of the Voluntary Tanker Agreement.

SUMMARY: The Maritime Administration announces the publication below of the final text of its Voluntary Tanker Agreement (VTA). The Agreement below replaces a prior version that was last published in Volume 48 of the **Federal Register** at page 38715 (August 25, 1983) and is issued in accordance with the provisions of 44 CFR 332. The proposed text of the VTA was initially published in Volume 72 of the **Federal Register** at page 41099 (July 26, 2007). Thereafter, a public hearing on the proposed text of the VTA was held on August 29, 2007, at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. No comments requesting changes to the proposed text were received. Consequently, the final text is unchanged from the text considered at the public hearing.

The Department of Justice has issued a finding that the VTA as published below satisfies the statutory criteria of the Defense Production Act [50 U.S.C. App. Section 2158(f)(1)(B)] required for its creation. See Volume 73 of the **Federal Register** at page 46335 (August 8, 2008).

FOR FURTHER INFORMATION CONTACT: Tanker owners/operators that wish to participate in the VTA may request an enrollment package from Thomas Christensen, Director Office of Emergency Preparedness, Room W23–304, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–5909, *tom.christensen@dot.gov.* The enrollment package may also be found on the Maritime Administration Web site, *http://www.marad.dot.gov,* under ''Ships & Shipping'' and ''Voluntary Tanker Agreement.''

SUPPLEMENTARY INFORMATION:

Text of the Voluntary Tanker Agreement

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Preface

Pursuant to the authority contained in Section 708, Defense Production Act of 1950 as amended (*50 App. U.S.C. 2158*) the Maritime Administrator (''the Administrator''), after consultation with the Department of Defense (DoD) and representatives of the tanker industry, has developed this Voluntary Tanker Agreement. The Agreement establishes the terms, conditions and procedures under which Participants agree voluntarily to make tankers available to DoD. The Agreement further affords Participants defenses to civil and criminal actions for violations of antitrust laws when carrying out the Agreement. The Agreement is designed to create a close working relationship among the Administrator, the Commander of U.S. Transportation Command (the DoD-designated representative for purposes of this Agreement) and the Participants through which DoD requirements and the needs of the civil economy can be met through cooperative action. The Agreement affords Participants flexibility to respond to defense requirements and adjust their commercial operations to minimize disruption whenever possible.

The Secretary of Defense (SecDef) has approved this Agreement as an Emergency Preparedness Program (EPP) pursuant to *46 U.S.C. 53107*.

This is a replacement for the Agreement as it first appeared in Volume 48 of the **Federal Register** at page 38715 (August 25, 1983). Because this replacement contains new substantive provisions, those wishing to participate in the Agreement should submit new applications.

Voluntary Tanker Agreement

I. Purpose

The Administrator has determined, in accordance with Section 708(c)(1) of the Defense Production Act of 1950 (DPA), that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General that a standby agreement for the utilization of tanker capacity is necessary for the national defense. The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has issued a finding that tanker capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

The purpose of the Agreement is to provide a responsive transition from peace to contingency operations through procedures agreed in advance to provide tanker capacity to support DoD contingency requirements. The Agreement establishes procedures for the commitment of tanker capacity to satisfy such requirements. The Agreement is intended to promote and facilitate DoD's use of existing commercial tanker resources in a manner which minimizes disruption to commercial operations whenever possible.

The Agreement will change from standby to active status upon activation by appropriate authority as described in Section VI.

II. Authorities

A. Maritime Administration (MARAD)

1. Sections 101 and 708, DPA *(50 App. U.S.C. 2158); E.O. 12919, 59 FR 29525 (June 7, 1994); E.O. 12148,* 3 CFR 1979 Comp., p. 412, as amended; 46 CFR Part 340; DOT Order 1900.9.

2. Section 501 of E.O.12919, as amended, delegated the authority of the President under Section 708 of the DPA to the Secretary of Transportation (SecTrans), among others. SecTrans delegated to the Administrator the authority under which the Voluntary Tanker Agreement is sponsored in DOT Order 1900.9.

B. U.S. Transportation Command (USTRANSCOM)

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating Commander USTRANSCOM to provide air, land, and sea transportation for the DoD.

III. General

A. Participation

1. Tanker operators of vessels greater than 20,000 deadweight tons may become Participants in this Agreement by submitting an executed copy of the form specified in Section VII of this Agreement.

2. Owners and operators of Integrated Tug-Barges (ITBs) and Articulated Tug-Barges (ATBs) greater than 20,000

deadweight tons (DWT) may become Participants in this Agreement.

3. For the purposes of this Agreement, ''Participant'' includes the corporate entity entering into this Agreement and all United States subsidiaries and affiliates of that entity which own or operate ships in the course of their regular business and in which that entity has more than fifty (50) percent control either by stock ownership or otherwise.

4. Vessels of a Participant subject to the provisions of this Agreement shall not be subject to the provisions of any other DoD Sealift Readiness Program (SRP).

5. A list of Participants will be published annually in the **Federal Register**.

B. Effective Date and Duration of Participation

Participation in this Agreement is effective upon execution of the application form by the Participant and the Administrator or their authorized designees and remains in effect until terminated in accordance with *44 CFR 332.4.*

C. Withdrawal From the Agreement

Participants may withdraw from this Agreement subject to the fulfillment of obligations incurred under the Agreement prior to the date such withdrawal becomes effective, by giving written notice to the Administrator. Withdrawal from this Agreement will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

D. Rules and Regulations

Participants acknowledge and agree to abide by all provisions of Section 708, DPA, as amended (*50 App. U.S.C. 2158*), and regulations related thereto which are promulgated by the SecTrans, the Attorney General, and the Chairman of the Federal Trade Commission. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR Part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

E. Amendment of the Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman of the Federal Trade Commission, SecTrans, through her representative MARAD, and SecDef, through his representative, Commander USTRANSCOM. The Administrator, Commander USTRANSCOM and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman of the Federal Trade Commission.

2. A Participant may propose amendments to the Agreement at any time.

F. Administrative Expenses

Administrative and out-of-pocket expenses incurred by Participants shall be borne solely by participants.

G. Record Keeping

1. MARAD and the DoD have primary responsibility for maintaining records in accordance with 44 CFR Part 332.

2. The Director, Office of Emergency Preparedness, MARAD, shall be the official custodian of records related to the carrying out of this Agreement, except records of direct dealings between the DoD and Participants.

3. For direct dealings between the DoD and Participants, the designee of the SecDef shall be the official custodian of the record but the Director of the Office of Emergency Preparedness, MARAD shall have complete access thereto.

4. In accordance with *44 CFR 332.3(d),* each Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Participants or with any other member of the industry, related to the carrying out of this Agreement. Each Participant agrees to make available to the Administrator, the Commander USTRANSCOM, the Attorney General, the Director of the Federal Emergency Management Agency, and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item that this section requires the Participant to maintain. Any record maintained under this subsection shall be available for public inspection and copying, unless exempted on the grounds specified in *5 U.S.C. 552(b)(1)* and *(3)* or identified as privileged and confidential information in accordance with Section 705(e) of the DPA, as amended, and 94 CFR Part 332.

H. Requisition of Ships of Non-Participants

The Administrator upon presidential authorization may requisition ships of non-Participants to supplement capacity made available for defense operations under this Agreement and to balance the economic burden of defense support among companies operating in U.S. trade. Non-Participant owners of requisitioned tankers will not participate in the Tanker Requirements Committee and will not enjoy the immunities provided by this Agreement.

I. Jones Act Waivers

In situations where the activation of the Agreement deprives a Participant of all or a portion of its Jones Act tonnage and, at the same time, creates a general shortage of Jones Act tonnage on the market, the Administrator may request that the Assistant Commissioner, Office of Regulations and rulings, U. S. Customs and Border Protection, Department of Homeland Security grant a temporary waiver of the provisions of the Jones Act to permit a Participant to charter or otherwise utilize non-Jones Act tonnage. The tonnage for which such waivers are requested will be approximately equal to the Jones Act tonnage chartered to the DoD and any waiver that may be granted will be effective for the period that the Jones Act tonnage is on charter to the DoD plus a reasonable time for termination of the replacement tonnage charters as determined by the Administrator.

J. Temporary Replacement Vessel

Notwithstanding *10 U.S.C. 2631, 46 U.S.C. 55304* (formerly Public Resolution 17), *46 U.S.C. 55302, 55305, 55312* or *55314* (formerly Sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936), or any other cargo preference law of the United States—

1. A Participant may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated by the SecDef under an Emergency Preparedness Agreement or under a primary DoD-approved SRP; and

2. Such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to *10 U.S.C. 2631, 46 U.S.C. 55304* (formerly Public Resolution 17), and *46 U.S.C. 55302, 55305, 55312* or *55314* (formerly Sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936) to the same extent as the eligibility of the vessel or vessel capacity replaced.

IV. Antitrust Defense

Under the provisions of Subsection 708(j), DPA, as amended (*50 App. U.S.C. 2158(j)),* each Participant in this

Agreement shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws, with respect to any act or omission to act to develop or carry out this Agreement, that such act or omission to act was taken in good faith by the Participant in the course of developing or carrying out this Agreement and that the Participant fully complied with the provisions of the Act, and the rules promulgated thereunder, and acted in accordance with the terms of this Agreement. This defense shall not be available to the Participant for any act or omission occurring after the termination of this Agreement, nor shall it be available, upon the modification of this Agreement, with respect to any subsequent act or omission that is beyond the scope of the modified Agreement, except that no such termination or modification will be accomplished in a way that will deprive Participants of antitrust defense for the fulfillment of obligations incurred. This defense shall be available only if and to the extent that the Participants asserting it demonstrate that the action, which includes a discussion or agreement, was within the scope of the Agreement. The person asserting the defense bears the burden of proof. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

V. Terms and Conditions

A. Agreement by Participants

1. Each Participant agrees to contribute tanker capacity as requested by the Administrator in accordance with Section V. B. below, at such times and in such amounts as the Administrator, as requested by DoD, shall determine to be necessary to meet the essential needs of the DoD for the transportation of DoD MILSPEC petroleum and petroleum products in bulk by sea.

2. Each Participant further agrees to make tankers and tanker capacity available to other Participants when requested by the Administrator, on the advice of the Tanker Requirements Committee, in order to ensure that contributions to meet DoD requirements are made on a proportionate basis whenever possible or to ensure that no participating tanker operator is disproportionately hampered in meeting the needs of the civil economy in accordance with priorities established by authority of the President.

B. Proportionate Contribution of Capacity

1. Any entity receiving payments under the Maritime Security Program (MSP) pursuant to the Maritime Security Act of 2003 (MSA 2003) (*Pub. L. 108–136*) shall become a Participant with respect to all tankers enrolled in the MSP at all times until the date the MSP operating agreement would have terminated according to its original terms. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in *46 U.S.C. 53107.*

2. Participants hereto not receiving MSP payments pursuant to MSA 2003 agree to contribute tanker capacity under the Agreement in the proportion that its ''controlled tonnage'' bears to the total ''controlled tonnage'' of all Participants. Because exact proportions may not be feasible, each Participant agrees that variances are permissible at the discretion of the Administrator.

3. Clean tankers and clean tonnage shall mean tankers inspected and approved by DESC Quality Representatives, capable of meeting DoD quality standards, and able to carry refined MILSPEC petroleum products.

a. Chemical tankers and tankers in dirty trade may contribute clean tanker capacity only after being certified as being able to meet DoD quality standards to carry refined MILSPEC petroleum products.

4. ''Controlled tonnage'' shall mean tankers, including ITBs and ATBs of over 20,000 DWT capacity and present military usefulness in the transportation of refined DoD cargoes pursuant to the requirements of associated warplans:

a. In which, as of the effective date of the activation of this Agreement, the Participant or any of its U.S. subsidiaries or affiliates has a controlling interest and which are registered in any of the following countries: The United States, Liberia, Panama, Honduras, the Bahamas, or the Marshall Islands; PLUS

b. Ships which are on charter or under contract to such Participant for a period of six (6) months or more from the effective date of activation of the Agreement, regardless of flag of registry, exclusive of tonnage available to the Participant under contracts of affreightment and consecutive voyage charter; provided that, in the event an owner of a vessel terminates a time charter in accordance with a war clause, the affected tonnage will be excluded from the chartering Participant's controlled tonnage; PLUS

c. Any other non-U.S.-flag tonnage which a Participant may offer to designate as ''controlled tonnage'' and which the Tanker Requirements Committee accepts; MINUS

d. Tankers described in subparagraphs, a. and b. which are chartered out or under contract to others for a remaining period of six (6) months or more from the effective date of activation of this Agreement: MINUS

e. Certain vessels which are fitted with special gear and are on permanent station for the storage of crude oil from a production platform and vessels which may have a dual role of production storage and transportation use to a limited location.

5. This Agreement shall not be deemed to commit any vessel with respect to which the law of the country of registration requires the approval of the government before entering into this Agreement of furnishing such vessel under the terms of this Agreement until such time as the required approval has been obtained.

6. The obligations of Participants to contribute clean capacity under the Agreement shall be calculated on a proportionate basis wherever possible among the Participants by the Tanker Requirements Committee.

7. A vessel on charter to a Participant shall not be subject to a relet to the DoD in the case where the period of the relet would be longer than the term of the Participant's incharter or in the case where the relet would otherwise breach the terms of the incharter, but such tonnage shall be included in the calculation of the Participant's ''controlled tonnage''.

8. The Administrator retains the right under law to requisition ships of Participants. A Participant's ships which are directly requisitioned by the U.S. Government or which are called up pursuant to other U.S. Government voluntary arrangements shall be credited against the Participant's proportionate contribution under this Agreement. Ships on charter to the DoD when this Agreement is activated shall not be so credited.

C. Reports of Controlled Tonnage

Twice annually, or upon request of the Administrator and in such form as may be requested, each Participant shall submit information as to ''controlled tonnage'' necessary for the carrying out of this Agreement. Information which a Participant identifies as privileged and confidential shall be withheld from public disclosure in accordance with Sections 708(h)(3) and 705(e) of the DPA, as amended, and 44 CFR Part 332.

D. Freight Rates Under the Agreement

1. The rate of charter hire applicable to each charter under this Agreement shall be the ''prevailing market rate'' effective at the time of the proposed loading of the vessel. The ''prevailing market rate'' shall be determined by the Military Sealift Command (MSC) Contracting Officer utilizing the price analysis techniques set forth in FAR Part 15.4 to determine that the negotiated rates are fair and reasonable, utilizing market or previous contract prices. Time charter hire rates, for either U.S. or foreign-flag tankers, shall be expressed in terms of a per diem rate(s).

2. The rate of charter hire fixed with respect to each charter shall apply for the entire period of the charter, except that:

a. For a consecutive voyage charter, the rate of charter shall be increased or decreased to reflect increases or decreases in the price of bunker fuel applicable in the area of the vessel's trade;

b. Reimbursement for increased war risk insurance premiums will be made in accordance with section V.E.;

E. War Risk Insurance

1. Increased War risk insurance premiums for time chartered vessels will be paid by DoD or MARAD war risk insurance policies will be implemented.

2. For voyage and consecutive voyage charters, the Participant will be reimbursed for increases in war risk insurance premiums that are applicable to the actual voyage but are announced after the charter rate is established by the broker panel.

3. For any ship chartered under this Agreement, the SecDef may procure from the SecTrans war risk insurance on hull and machinery, war risk protection and indemnity insurance, and Second Seaman's War Risk Insurance, subject to *46 U.S.C. 53905* (formerly Section 1203 of the Merchant Marine Act, 1936).

VI. Activation of the Agreement

A. Determination of Necessity

This Agreement may be activated at the request of The Commander USTRANSCOM, with the approval of SecDef, to support Contingency operations when there is a tanker capacity emergency. A tanker capacity emergency will be deemed to exist when tanker capacity required to support operations of U.S. forces outside the continental United States cannot be supplied through the commercial tanker charter market in accordance with applicable laws and regulations or other voluntary arrangements. The Administrator shall notify the Attorney General and the Chairman of the Federal Trade Commission, when such a finding is made.

B. Tanker Requirements Committee

1. There is established a Tanker Requirements Committee (the ''Committee'') to provide USTRANSCOM, MARAD and Participants a forum to:

a. Analyze DoD Contingency tanker requirements.

b. Identify commercial tanker capacity that may be used to meet DoD requirements related to Contingencies and, as requested by USTRANSCOM, exercises, and special movements.

c. Develop and recommend Concepts of Operations (CONOPS) to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

d. Advise the Administrator on the tanker capacity that each Participant controls and is capable of meeting Contingency requirements.

2. The Committee will be co-chaired by MARAD and USTRANSCOM and will convene as jointly determined by the co-chairs.

3. The Committee will not be used for contract negotiations and/or contract discussions between carriers and DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

4. The Committee will consist of designated representatives from MARAD, USTRANSCOM, to include Military Sealift Command, Defense Energy Support Center, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs. Representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants resources. All Participants will be invited to open Committee meetings. For selected Committee meetings, attendance may be limited to designated Participants to meet specific operational requirements.

5. The Committee co-chairs shall:

a. Notify the Attorney General, the Chairman of the Federal Trade Commission, and all Participants of the time, place and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Agreement:

b. Provide for publication in the **Federal Register** of a notice of the time, place and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed;

c. Establish the agenda for each meeting and be responsible for adherence to the agenda;

d. Provide for a written summary or other record of each meeting and provide copies of transcripts or other records to the Attorney General, the Chairman of the Federal Trade Commission, and all Participants; and

e. Take necessary actions to protect confidentiality of data discussed with or obtained from Participants.

C. Tanker Charters

MSC, as designated by USTRANSCOM, will deal directly with tanker operators in the making of charter parties and other arrangements to meet the defense requirement, keeping the Administrator informed. To reduce risk to owners and to control cost to the government, all government charters will be time charters, unless specifically designated as voyage charter by the Contracting Officer. If vessels are chartered between Participants, Participants will keep the Administrator informed. The Administrator will keep the Attorney General and the Chairman of the Federal Trade Commission informed of the actions taken under this Agreement.

D. Termination of Charters Under the Agreement

MSC, as the contracting officer, will notify the Administrator as far as possible in advance of the prospective termination of the need for tanker capacity under this Agreement.

VII. Application and Agreement

The Administrator has adopted and makes available a form on which tanker operators may apply for and become Participants in this Agreement (''Application and Agreement to Participate in the Voluntary Tanker Agreement''). The form will incorporate by reference the terms of this Agreement.

Application and Agreement To Participate in the Voluntary Tanker Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Tanker Agreement.'' The text of said Agreement is published in 72 FR 41099, July 26, 2007. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (*50 App. U.S.C.*

2158). Regulations governing is Agreement appear at 44 CFR Part 332 and are reflected at 49 CFR Subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Tanker Agreement published in 72 FR 41099, July 26, 2007, as though said text were physically recited herein.

The applicant, as Participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR Part 332 and as reflected at 49 CFR Subtitle A, and the terms of the Voluntary Tanker Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make vessels or capacity available for use by the Department of Defense and to other Participants for the purpose of meeting national defense requirements.

By order of the Maritime Administrator.

Dated: August 25, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–20392 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2008–0211]

Information Collection Activities

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Pipeline and Hazardous Materials Safety Administration (PHMSA) invites comments on its intention to revise forms PHMSA F 7100.2—Incident Report For Gas Transmission and Gathering Systems; PHMSA F 7100.1—Incident Report for Gas Distribution Systems; and PHMSA F 7000–1—Accident Report for Hazardous Liquid Pipeline Systems, and its intention to request approval from the Office of Management and Budget (OMB) for revised information collection burdens.

DATES: Interested parties are invited to submit comments on or before November 3, 2008.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2008–0211 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, 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:* Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov.* Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Requests for a copy of an information collection should be directed to Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP–10, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP–10, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies revised information collection requests that PHMSA will be submitting to OMB for renewal and extension. The information collected pertaining to reportable natural gas transmission incidents provides an important tool for identifying safety trends in the gas pipeline industry. The National Transportation Safety Board (NTSB), and the Government Accountability Office (GAO) have urged PHMSA to revise the information collected on the natural gas pipeline operator incident and hazardous liquid pipeline operator accident report forms. NTSB Safety Recommendation P–05–04 recommends that PHMSA take action to change the liquid accident reporting form (PHMSA F 7000–1) and require operators to provide data related to controller fatigue. Additionally, section 20 of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) requires PHMSA to ''amend accident reporting forms to require operators of gas and hazardous liquid pipelines to provide data related to controller fatigue.'' GAO recommended in its report, GAO–06–946 titled ''Integrity Management Benefits Public Safety, but Consistency of Performance Measures Should Be Improved'' that ''To improve the consistency and usefulness of the integrity management performance measures, we are recommending that the Secretary of Transportation direct the Administrator for the Pipeline and Hazardous Materials Safety Administration to take the following two actions:

(1) Revising the definition of a reportable incident to consider changes in the price of natural gas; and

(2) Establish consistent categories of causes for incidents and leaks on all gas pipeline reports.'' Recommendation number (1) is to be addressed by a future rulemaking and recommendation number (2) is addressed through improvements in incident forms addressed through this information collection request (ICR).

PHMSA consulted industry and trade association representatives of the Interstate Natural Gas Association of America, the American Gas Association, the American Petroleum Institute, and state pipeline safety office representatives through the National Association of Pipeline Safety Representatives, in considering revisions to the natural gas pipeline operator incident and hazardous liquid pipeline operator accident report forms to make the information collected more useful to industry, government, and the public.

PHMSA has revised burden estimates, where appropriate, to reflect revisions to the accident and incident reporting forms since the information collections were last approved. The following information is provided for each information collection: (1) Abstract for affected accident and incident reporting forms; (2) title of the information collection; (3) OMB control number; (4) affected accident or incident form; (5) description of affected public; (6) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and,

when approved by OMB, publish notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Abstract: To ensure adequate public protection from exposure to potential natural gas and hazardous liquid pipeline failures, PHMSA collects information on reportable natural gas pipeline incidents and hazardous liquid pipeline accidents. Additional information is also obtained concerning the characteristics of an operator's pipeline system. This information is needed for normalizing the incident information in order to provide for adequate safety trending. The requirements for reporting natural gas incidents are found in 49 CFR Part 191 and for reporting hazardous liquid pipeline accidents are found in 49 CFR Part 195. The regulations require submission of these reports within 30 days of the incident or accident occurrence. The information is used to assist Federal and state pipeline safety programs for accident trending and by industry, trade associations and other interested stakeholders, and to provide a background for accident investigations.

Title: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.

OMB Control Number: 2137–0047.

Form: Accident Report—Hazardous Liquid Pipeline Systems (Form No. PHMSA–7000–1).

Affected Public: Hazardous liquid pipeline operators.

Recordkeeping:

Number of Respondents: 200.

Total Annual Responses: 130 long form, 200 short form.

Long form is for spills of five or more barrels; short form is for spills of 5 gallons to less than 5 barrels.

Total Annual Burden Hours: 1332.

Frequency of collection:

Short form: 200 reports/200 operators per year = 1 short form per operator annually;

130 reports/200 operators per year = .65 long forms per operator annually.

Title: Incident and Annual Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Form: Incident Report—Gas Distribution System (Form PHMSA F 7100.1).

Affected Public: Natural gas distribution pipeline operators.

Recordkeeping:

Number of Respondents: 1200.

Total Annual Responses: 155.

Total Annual Burden Hours: 1210.

Frequency of collection: 155 incidents per year /1200 operators = 0.14.

Title: Incident and Annual Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Form: Incident Report—Gas Transmission and Gathering Systems (Form PHMSA F 7100.2).

Affected Public: Natural gas transmission pipeline operators.

Recordkeeping:

Number of Respondents: 900.

Total Annual Responses: 153.

Total Annual Burden Hours: 1,102.

Frequency of collection: 153 incidents per year/900 operators = 0.17.

Comments are invited on: (a) The need for the proposed collection of information 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 the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on August 28, 2008.

Joy O. Kadnar,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. E8–20440 Filed 9–3–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–497 (Sub-No. 4X)]

Minnesota Northern Railroad, Inc.—Abandonment Exemption—in Norman County, MN

On August 15, 2008, Minnesota Northern Railroad, Inc. (MNN) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 19.2-mile portion of its ''P Line'' subdivision between milepost 21.0, at or near Perley, and milepost 40.2, at the north end of the Marsh River Bridge south of Shelly, in Norman County, MN. The line traverses United States Postal Service Zip Codes 56548, 56550, 56574, and 56581, and includes the stations of Perley (milepost 21.0), Hendrum (milepost 27.4), and Halstad (milepost 33.5).

The line does not contain federally granted rights-of-way. Any documentation in MNN's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 3, 2008.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[1]

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 24, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–497 (Sub-No. 4X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112. Replies to the petition are due on or before September 24, 2008.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings

[1] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: August 27, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–20431 Filed 9–3–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before November 3, 2008.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following records and forms:

Title: Personnel Questionnaire—Alcohol and Tobacco Products.

OMB Number: 1513–0002.

TTB Form Number: 5000.9.

Abstract: The information listed on TTB F 5000.9, Personnel Questionnaire—Alcohol and Tobacco Products, enables TTB to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for the business, and criminal record. If the applicant is found not to be qualified, the permit may be denied.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Total Annual Burden Hours: 10,000.

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

OMB Number: 1513–0008.

TTB Form Number: 5170.7.

Abstract: TTB F 5170.7 is used to document the shipment of taxpaid Puerto Rican articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury officials to certify that products are either taxpaid or deferred under appropriate bond. This serves as a method of protection of the revenue.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 100.

Title: Application for Certification/Exemption of Label/Bottle Approval.

OMB Number: 1513–0020.

TTB Form Number: 5100.31.

Abstract: The Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires the alcoholic beverage labels to provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorized the Secretary of the Treasury Department to issue regulations to carry out its provisions. To ensure compliance with the FAA Act and the related regulations, industry members complete TTB F 5100.31 as an application to label their products.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10,982.

Estimated Total Annual Burden Hours: 41,238.

Title: Report—Proprietor of Export Warehouse.

OMB Number: 1513–0024.

TTB Form Number: 5220.4.

Abstract: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products

are required to file a monthly report. This report summarizes all transactions by the proprietor handling receipts, dispositions, and on-hand quantities. TTB F 5220.4 is used for product accountability and is examined by TTB National Revenue Center personnel.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 123.

Estimated Total Annual Burden Hours: 1,181.

Title: Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Tubes.

OMB Number: 1513–0026.

TTB Form Number: 5620.7.

Abstract: TTB F 5620.7 documents that cigars, cigarettes, and cigarette papers and tubes were shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States and that the tax has been paid on these tobacco articles. TTB F 5620.7 is the claim form that a person who paid the tax on the articles uses to file for a drawback or refund for the tax that was paid.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 185.

Estimated Total Annual Burden Hours: 92.5.

Title: Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes.

OMB Number: 1513–0033.

TTB Form Number: 5210.5.

Abstract: TTB F 5210.5 documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of, and statistical classes of large cigars. TTB examines and verifies entries on these reports so as to identify unusual activities, errors, and omissions.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 150.

Estimated Total Annual Burden Hours: 1,800.

Title: Inventory—Export Warehouse Proprietor.

OMB Number: 1513–0035.

TTB Form Number: 5220.3.

Abstract: TTB F 5220.3 is used by export tobacco warehouse proprietors to record inventories that are required by laws and regulations. The form provides a uniform format for recording inventories and establishes a contingent tax liability on tobacco products.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 98.

Estimated Total Annual Burden Hours: 490.

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

OMB Number: 1513–0037.

TTB Form Number: 5100.11.

Abstract: TTB F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation; or transfer to a foreign trade zone, customs manufacturer's bonded warehouse, or customs bonded warehouse; or for use as supplies on vessels or aircraft.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 6,000.

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

OMB Number: 1513–0040.

TTB Form Number: 5110.25.

Abstract: TTB F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities (such as warehousing bulk distilled spirits for non-industrial use without bottling). TTB personnel use the information on the form to identify the applicant, the location of the business, and the types of activities to be conducted.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 20.

Title: Drawback on Distilled Spirits Exported.

OMB Number: 1513–0042.

TTB Form Number: 5110.30.

Abstract: The information collected on TTB F 5110.30 provides a uniform format for determining that taxes have already been paid. The form details specific operations and accounts for taxable commodities. Tax liability is established to prevent jeopardy to the revenue derived from distilled spirits. TTB examines and verifies entries so as to identify unusual activities, errors, or omissions.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 10,000.

Title: Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

OMB Number: 1513–0043.

TTB Form Number: 5110.31.

Abstract: TTB F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amounts of spirits to be shipped, and the bond of the U.S. person to cover taxes on such spirits.

Current Actions: We are making minor changes to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 450.

Title: Applications for Tobacco Products and for Cigarette Papers and Tubes.

OMB Number: 1513–0078.

TTB Form Numbers: 5200.3, 5200.16, 5230.4, and 5230.5.

Abstract: The forms are used by tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer of tobacco products, importer of tobacco products, or proprietor of an export warehouse.

Current Actions: We are making minor corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 630.

Estimated Total Annual Burden Hours: 1,130.

Title: Special (Occupational) Tax Registration and Return.

OMB Number: 1513–0112.

TTB Forms Number: 5630.5a, 5630.5d, and 5630.5t.

Abstract: On August 10, 2005, President Bush signed into law the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,'' Public Law 109–59. Section 11125 of that act permanently repealed, effective July 1, 2008, the special (occupational) tax (SOT) on all taxpayers except for Tobacco Product Manufacturers (TPM), Cigarette Papers and Tubes Manufacturers (CPTM), and Tobacco Products Export Warehouse Proprietors (TPEWP). As a result, 3 forms were created to cover all phases of the new SOT collection. TTB F 5630.5 was amended to create TTB F 5630.5t, which is used only for collection of taxes from TPM, CPTM, and TPEWP; the new TTB F 5630.5a is a tax return/registration for the period on and before July 1, 2008; and the new TTB F 5630.5d is used to register Alcohol Dealers on and after July 1, 2008.

Current Actions: We are making corrections to this information collection and are submitting it as a revision.

Type of Review: Revision of a currently approved collection.

Affected Public: Business and other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 35,000.

Estimated Total Annual Burden Hours: 14,583.

Dated: August 27, 2008.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E8–20451 Filed 9–3–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning a proposed new collection titled ''Customer Complaint Form''.

DATES: You should submit written comments by: November 3, 2008.

ADDRESSES: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, *Attention:* 1557–0232, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0232, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on the following proposed information collection:

Title: Customer Complaint Form.

OMB Control No.: 1557–0232.

Description: The customer complaint form was developed as a courtesy for those that contact the Office of the Comptroller of the Currency's Customer Assistance Group and wish to file a formal, written complaint. The form allows consumers to focus their issues and provide a complete picture of their concerns, but is entirely voluntary. It is designed to prevent having to go back to a consumer for additional information, which delays the process. Completion of the form allows the Customer Assistance Group to process the complaint more efficiently.

The Customer Assistance Group will use the information to create a record of the consumer's contact, including capturing information that can be used to resolve the consumer's issues and provide a database of information that is incorporated into the OCC's supervisory process.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Number of Respondents: 14,000.

Total Annual Responses: 14,000.

Frequency of Response: On occasion.

Total Annual Burden Hours: 924.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 28, 2008.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E8–20492 Filed 9–3–08; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Agency Information Collection (Claim for Disability Insurance Benefits, Government Life Insurance) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 6, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0016'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0016.''

SUPPLEMENTARY INFORMATION:

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of a currently approved collection.

Abstract: Policyholder's complete VA Form 29–357 to claim disability insurance on National Service Life Insurance and United States Government Life Insurance policies. The information collected is used to determine the policyholder's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 19, 2008 at pages 34992–34993.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Dated: August 27, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–20476 Filed 9–3–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
September 4, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2008–09 Early Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

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[FWS–R9–MB–2008–0032; 91200–1231–9BPP–L2]

RIN 1018–AV62

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2008–09 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter ''Service'' or ''we'') recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2008.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 15, 2008, **Federal Register** (73 FR 48098), we proposed special migratory bird hunting regulations for the 2008–09 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1918 Migratory Bird Treaty with Canada.

In the May 28, 2008, **Federal Register** (73 FR 30712), we requested that tribes desiring special hunting regulations in the 2008–09 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html*.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions during the 2008 Waterfowl Breeding Population and Habitat Survey were characterized in many areas by a delayed spring compared to several preceding years. Drought in many parts of the traditional survey area contrasted sharply with record snow and rainfall in the eastern survey area. The total pond estimate (Prairie Canada and United States combined) was 4.4 ± 0.2 million ponds, 37 percent below last year's estimate of 7.0 ± 0.3 million ponds and 10 percent lower than the long-term average of 4.9 ± 0.03 million ponds. The 2008 estimate of ponds in Prairie Canada was 3.1 ± 0.1 million. This was a 39 percent decrease from last year's estimate (5.0 ± 0.3 million), and 11 percent below the 1955–2007 average (3.4 ± 0.03 million). The 2008 pond estimate for the north-central United States (1.4 ± 0.1 million) was 30 percent lower than last year's estimate (2.0 ± 0.1 million) and 11 percent below the long-term average (1.5 ± 0.02 million).

Breeding Population Status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 37.3 ± 0.6 [SE] million birds. This was 9 percent lower than last year's estimate

of 41.2 ± 0.7 million birds, but 11 percent above the 1955–2007 long-term average. Mallard (*Anas platyrhynchos*) abundance was 7.7 ± 0.3 million birds, similar to last year's estimate of 8.3 plusmn; 0.3 million birds and to the long-term average. Blue-winged teal (*A. discors*) estimated abundance was 6.6 ± 0.3 million birds similar to last year's estimate of 6.7 ± 0.4 million birds, and 45 percent above the long-term average. Estimated abundances of gadwall (*A. strepera;* 2.7 ± 0.2 million) and northern shovelers (*A. clypeata;* 3.5 ± 0.2 million) were lower than those of last year (−19 percent and −23 percent, respectively), but both remained 56 percent above their long-term averages. Estimated abundance of American wigeon (*A. americana;* 2.5 ± 0.2 million) was similar to the 2007 estimate and the long-term average. Estimated abundances of green-winged teal (*A. crecca;* 3.0 ± 0.2 million) and redheads (*Aythya americana;* 1.1 ± 0.1 million) were similar to last year's, but were each >50 percent above their long-term averages. The redhead and green-winged teal estimates were the highest and the second highest ever for the traditional survey area. The canvasback (*A. valisineria*) estimate of 0.5 ± 0.05 million was down 44 percent relative to 2007's record high, and 14 percent below the long-term average. Northern pintails (*Anas acuta;* 2.6 ± 0.1 million) were 22 percent below last year's estimate and 36 percent below their long-term average. The scaup (*Aythya affinis* and *A. marila* combined; 3.7 ± 0.2 million) estimate was similar to that of 2007, and remained 27 percent below the long-term average.

The eastern survey area was restratified in 2005 and is now composed of strata 51–72. Estimates of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca]*, and surf [*M. perspicillata*]), green-winged teal, American wigeon, bufflehead (*B. albeola*), American black duck (*A. rubripes*), ring-necked duck (*Aythya collaris*), mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]), and goldeneye (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) all were similar to their 2007 estimates and long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area (revised in 2008 to exclude Alaska mallards), Michigan, Minnesota, and Wisconsin, and was estimated to be 7.7 ± 0.3 million. This was similar to the revised 2007 estimate of 8.5 ± 0.3 million. In 2007, we reported a projected mallard fall-flight index of 11.4 million ± 1.0 million. After the removal of Alaska mallards from the mid-continent stock, the revised 2007 fall-flight estimate was 10.9 ± 1.0 million, which was not significantly different from the 2008 estimate of 9.2 ± 0.8 million. These indices were based on mid-continent mallard population models revised in 2002, and the 2008 updated model weights, and therefore differ from those previously published.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). In May of 2008, much of eastern Arctic and subarctic Canada experienced well above-average temperatures which contributed to average or early availability of nesting sites. Reports from most other important goose and swan nesting areas indicated near-average nesting phenology and average production of young in 2008. Poor nesting conditions were reported from Wrangel Island, Russia and relatively small areas along western Hudson Bay, Bristol Bay (Alaska), and interior Alaska. Reduced wetland abundance in the Canadian and U.S. prairies, and a cool and wet spring in other southern areas may have reduced the production of some temperate-nesting Canada geese in 2008. Primary abundance indices increased for 17 goose populations and decreased for nine goose populations in 2008 compared to 2007. Primary abundance indices for both populations of tundra swans decreased in 2008 from 2007 levels. The following populations displayed significant positive trends during the most recent 10-year period ($P < 0.05$): Mississippi Flyway Giant, Aleutian, Atlantic Canada geese, Western Arctic/Wrangel Island snow geese, and Pacific white-fronted geese. No populations showed a significant negative 10-year trend. The forecast for the production of geese and swans in North America in 2008 is regionally variable, but production for many populations will be improved from the generally low production observed in 2007.

Waterfowl Harvest and Hunter Activity

National surveys of migratory bird hunters were conducted during the 2006 and 2007 hunting seasons. About 1.2 million waterfowl hunters harvested 13,808,100 (± 4 percent) ducks and 3,579,100 (± 5 percent) geese in 2006, and harvested 14,578,900 (± 4 percent) ducks and 3,666,100 (± 6 percent) geese in 2007. Mallard, green-winged teal, gadwall, blue-winged/cinnamon teal (*Anas cyanoptera*), and wood duck (*Aix sponsa*) were the most-harvested duck species, and Canada goose was the predominant goose species in the harvest. Coot hunters (about 39,400 in 2006 and 33,700 in 2007) harvested 199,100 (± 29 percent) coots in 2006 and 198,300 (± 29 percent) in 2007.

Comments and Issues Concerning Tribal Proposals

For the 2008–09 migratory bird hunting season, we proposed regulations for 29 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 21 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 15, 2008, closed on August 25, 2008. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 25, but not received prior to final action by us, in the September late-season final rule.

Great Lakes Indian Fish and Wildlife Commission's (GLIFWC) Proposal

We received one comment on the August 15 proposed rule from the GLIWFC. The GLIFWC disagreed with our proposal to not remove the species restriction on mallards. Based on their harvest information, they estimate that about 600 mallards were taken by tribal hunters last year. Further, they stated that these birds were harvested from a large geographic area and reiterated the results from their harvest survey that showed very few tribal hunters reaching their daily bag limit.

Service Response: As we stated in the August 15 proposed rule, under the GLIFWC proposed regulations, GLIFWC expects modifications to the mallard bag limits to have no appreciable impact on the mallard population since the total estimated mallard harvest last year was approximately 600 birds, tribal members averaged just 2.1 ducks per hunting trip, and only 1 survey respondent reported harvesting more than 10 ducks of all species on his best day of hunting last year. Thus, GLIFWC expects that this proposed change is likely to affect, at

most, a few individual hunters on a few individual days, and to have no appreciable effect on mallard populations.

Further review of recent GLIFWC harvest surveys (1996–98, 2001, and 2004) indicate that tribal off-reservation waterfowl harvest has averaged less than 1,000 ducks and 120 geese annually. In the latest survey year (2004), an estimated 53 hunters took an estimated 421 trips and harvested 645 ducks (1.5 ducks per trip) and 84 geese (0.2 geese per trip). Further, in the last 5 years of harvest surveys, only 1 hunter reported harvesting 20 ducks in a single day. Analysis of hunter survey data over the period in question (1996–2004) indicates a general downward trend in both harvest and hunter participation.

While we have expressed concerns in the past (October 15, 2007 **Federal Register**, 72 FR 58452 and the August 15, 2008, proposed rule) with GLIFWC's proposal for removal of mallard restrictions within the overall duck daily bag limits in the 1837, 1842, and 1836 Treaty Areas, we now believe that an increase in the daily bag limit of mallards (by removal of the internal bag limit restriction) from 10 mallards per day to 30 mallards per day in the 1837 and 1842 Treaty Areas and 20 mallards per day in the 1836 Treaty Area would have no significant conservation impacts on locally-breeding mallards. We have reached this conclusion based largely on the fact that the tribal harvest, both past and anticipated, is relatively minuscule—around 600 mallards—and widely distributed. However, we reiterate our request for GLIFWC to continue with their current harvest survey based on our implementation of a pilot bag limit increase for ducks in the 1837 and 1842 Treaty Areas last year. We believe the pilot bag limits implemented last year should warrant at least several years of data evaluation using GLIFWC's current harvest survey.

Finally, last year, in the August 31, 2007, proposed rule (72 FR 50596), we proposed daily bag limit restrictions for scaup and wood ducks (a daily bag limit of 5 for each). We proposed these particular restrictions on these species primarily because scaup have experienced a long-term population decline and wood ducks might be susceptible to local over-harvest. However, in GLIFWC's comments on that proposed rule, they requested removal of the Service's proposed bag limit restrictions on scaup and wood ducks and further noted that neither of these species have had a within bag limit species restriction in the past. They also stated that they were committed to appropriate harvest monitoring (with the understanding that this monitoring would be sufficient to identify any localized population impacts). In the October 15, 2007, final rule (72 FR 58452), we agreed with GLIFWC and stated our willingness to work with them to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters. However, we mistakenly failed to correct the species restrictions on scaup and wood ducks in either the October 15, 2007, final rule, or the August 15 proposed rule for this season. We are making that correction in this final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as we detailed in a March 9, 2006, **Federal Register** notice (71 FR 12216).

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *'' Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Division of Migratory Bird Management, at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the address indicated under

ADDRESSES or from our Web site at *http://www.fws.gov/migratorybirds/reports/reports.html* or at *http://www.regulations.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals process, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.)

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters).

Doves

Season Dates: Open September 1, through September 15, 2008; then open November 15, through December 29, 2008.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Hunters).

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2008, through March 9, 2009.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).

Ducks

1854 and 1837 Ceded Territories:

Season Dates: Begin September 13 and end November 30, 2008.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 3 black ducks, 6 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Reservation:

Season Dates: Begin September 6 and end November 30, 2008.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 2 black ducks, 4 scaup, 4 redheads, 2 pintails, 4 wood ducks, and 2 canvasbacks.

Mergansers

1854 and 1837 Ceded Territories:

Season Dates: Begin September 13 and end November 30, 2008.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

Reservation:

Season Dates: Begin September 6 and end November 30, 2008.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese: All Areas

Season Dates: Begin September 1 and end November 30, 2008.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules)

1854 and 1837 Ceded Territories:

Season Dates: Begin September 13 and end November 30, 2008.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Reservation:

Season Dates: Begin September 6 and end November 30, 2008.

Daily Bag Limit: 25 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2008.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Reservation:

Season Dates: Begin September 1 and end December 2, 2008.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: All Areas

Season Dates: Begin September 1 and end November 30, 2008.

Daily Bag Limit: Eight common snipe.

Woodcock: All Areas

Season Dates: Begin September 1 and end November 30, 2008.

Daily Bag Limit: Three woodcock.

Mourning dove: All Areas

Season Dates: Begin September 1 and end November 30, 2008.

Daily Bag Limit: 30 mourning dove.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. These regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 20, 2008, through January 18, 2009.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, through November 30, and open January 1, 2009, through February 8, 2009.

Daily Bag Limit: Five geese.

Other Geese (white-fronted geese and brant)

Season Dates: Open September 20, through November 30, 2008.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2008.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: Open September 1, through November 14, 2008.

Daily Bag Limit: 10 mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid.

Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).

Ducks

Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 31, 2008.

Daily Bag Limit: 30 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

Michigan 1836 Treaty Area:

Season Dates: Begin September 15 and end December 31, 2008.

Daily Bag Limit: 20 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

Mergansers: All Ceded Areas

Season Dates: Begin September 15 and end December 31, 2008.

Daily Bag Limit: 10 mergansers.

Geese: All Ceded Areas

Season Dates: Begin September 1 and end December 31, 2008. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 1 and end December 31, 2008.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 1 and end December 31, 2008.

Daily Bag Limit: 20, singly or in the aggregate.

Common Snipe

Season Dates: Begin September 15 and end December 31, 2008.

Daily Bag Limit: 16 common.

Woodcock

Season Dates: Begin September 5 and end December 1, 2008.

Daily Bag Limit: 10 woodcock.

Mourning Dove

1837 and 1842 Ceded Territories:

Season Dates: Begin September 1 and end November 9, 2008.

Daily Bag Limit: 15.

General Conditions:

1. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

3. Particular regulations of note include:

i. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

ii. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

iii. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

iv. The baiting restrictions included in section 10.05(2)(h) of the model ceded territory conservation code will be amended to include language which parallels that in place for non-tribal members as published at 64 FR 29799, June 3, 1999.

v. The shell limit restrictions included in section 10.05(2)(b) of the model ceded territory conservation code will be removed.

vi. Hunting hours shall be from a half hour before sunrise to 15 minutes after sunset.

4. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 1, 2008, through September 14, for the early-season, and open October 1, through January 31, 2009, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2008, through January 31, 2009.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2008, through January 31, 2009.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).

Ducks

Youth Season Date: September 20, 2008.

Regular Season Dates: Open September 27, through December 31, 2008.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 6, through December 31, 2008.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and

commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(h) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2008, through January 20, 2009.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, through February 8, 2009.

Daily Bag and Possession Limits: Five Canada geese and possession limit is twice the daily bag limit.

White-fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 20, through November 30, 2008.

Daily Bag and Possession Limits: Five birds and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2008.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

1. All tribal members are required to obtain a valid tribal resource card and 2008–09 hunting license.

2. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

3. Particular regulations of note include:

i. Nontoxic shot will be required for all waterfowl hunting by tribal members.

ii. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

iii. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

4. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(i) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2008, through January 20, 2009.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Coots and Gallinules

Season Dates: Same as ducks.

Daily Bag Limits: 12.

Canada Geese

Season Dates: Open September 1, 2008, through February 8, 2009.

Daily Bag Limit: Five geese.

White-fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, through November 30, 2008.

Daily Bag Limit: 10 of each species.

Sora Rails, Snipe, and Mourning Doves

Season Dates: Open September 1, through November 14, 2008.

Daily Bag Limit: 10 of each species.

Woodcock

Season Dates: Open September 1, through November 14, 2008.

Daily Bag Limit: Five woodcock.

General: Possession limits are twice the daily bag limits.

(j) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).

Tribal Members

Ducks, Mergansers and Coots

Season Dates: Open September 20, 2008, through March 10, 2009.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded merganser. The possession limit is twice the daily bag limit.

(k) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 20, through December 31, 2008.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 20, through December 31, 2008.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2008, through February 15, 2009.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 20, through December 31, 2008.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 20, through December 31, 2008.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 20, through December 31, 2008.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 20, through December 31, 2008.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

(l) Makah Indian Tribe, Neah Bay, Washington (Tribal Members).

Band-tailed Pigeons

Season Dates: Open September 20, through October 31, 2008.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 27, 2008, through January 25, 2009.

Daily Bag Limit: Seven ducks including no more than one redhead, one pintail, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 27, 2008, through January 25, 2009.

Daily Bag Limit: Four including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.

General: All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl; and (7) Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half hour after sunset; and (8) Open hunting areas are: GMUs 601 (Hoko), a portion of the 602 (Dickey) encompassing the area north of a line between Norwegian Memorial and east to Highway 101, and 603 (Pysht).

(m) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons

Season Dates: Open September 1, through September 30, 2008.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through September 30, 2008.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(n) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).

Ducks (Including Mergansers)

Season Dates: Open September 20, through November 21, 2008, and open December 1, through December 7, 2008.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through September 19; September 20, through November 21; and open December 1, through December 30, 2008.

Daily Bag and Possession Limits: 5 and 10 Canada geese, respectively, from September 1, through September 19, 2008; and 3 and 6 Canada geese, respectively, from September 20, through December 30, 2008. Hunters will be issued five tribal tags during the early season and three tribal tags during the late season for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 300 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 6, through November 9, 2008.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 9, 2008.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(o) Skokomish Tribe, Shelton, Washington (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 16, 2008, through February 28, 2009.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, 2008, through February 28, 2009.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2008, through February 15, 2009.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 16, 2008, through February 28, 2009.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 16, 2008, through February 28, 2009.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, 2008, through February 28, 2009.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 16, 2008, through February 28, 2009.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(p) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 1, 2008, through January 15, 2009.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2008, through January 15, 2009.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, through December 31, 2008.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2008, through January 15, 2009.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2008, and through January 15, 2009.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 1, through December 31, 2008.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(q) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2008, through January 31, 2009.

Daily Bag and Possession Limits: Seven ducks, including no more than two mallard hens, two redheads, two scaup, and one pintail. The canvasback season is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2008, through January 31, 2009.

Daily Bag and Possession Limits: 4 dark geese and 10 light geese. Possession limit is twice the daily bag limit.

(r) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).

Mourning Dove

Season Dates: Open September 1, through December 31, 2008.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(s) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).

Canada Geese

Season Dates: Open September 15, and through September 29, 2008, and open October 29, 2008, through February 25, 2009.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second.

Snow Geese

Season Dates: Open September 8, 2008, and through September 22, 2008.

Daily Bag Limits: 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(t) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 20, through December 19, 2008.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 1 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, through September 26, 2008, and open September 27, through December 19, 2008.

Daily Bag Limit: Eight geese through September 26 and five thereafter.

Coots

Season Dates: Open September 1, through November 30, 2008.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 1, through November 30, 2008.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 1, through November 30, 2008.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 1, through November 30, 2008.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

(u) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).

Band-tailed Pigeons

(Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only):

Season Dates: Open September 1, through September 15, 2008.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves

(Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only):

Season Dates: Open September 1, through September 15, 2008.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 28, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–20475 Filed 8–29–08; 11:15 am]

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Federal Register

Thursday,
September 4, 2008

Part III

Postal Regulatory Commission

39 CFR Part 3020

Administrative Practice and Procedure; Postal Service; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. CP2008–11, CP2008–12, CP2008–13; Order No. 103]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding several recently-negotiated Global Express Package Service contracts to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Re-publication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective September 4, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

Regulatory History

73 FR 43344, July 24, 2008

On August 5, 2008, the Postal Service filed three identical notices, which have been assigned to Docket Nos. CP2008–11, CP2008–12, and CP2008–13, announcing prices and classification changes for competitive products not of general applicability.[1] These notices announce individual negotiated service agreements, namely, specific Global Express Package Service (GEPS) contracts the Postal Service has entered into with individual mailers. The Postal Service believes each is functionally equivalent to the Global Express Package Services 1 (GEPS 1) product established in Docket No. CP2008–5. These dockets have been filed pursuant to 39 U.S.C. 3633, 39 CFR 3015.5 and Order No. 86.[2] In Order No. 86, the Commission found that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633 and if they are substantially equivalent to the initial GEPS 1 contract.[3]

In support of each of these dockets, the Postal Service also filed the contract and supporting materials under seal. The Governor's Decision supporting the GEPS 1 product was filed in consolidated Docket No. CP2008–5.[4] The Notices also contain the Postal Service's arguments that these agreements are substantially equivalent and that they exhibit similar cost and market characteristics to the GEPS 1 product. Notices at 3–5.

In Order No. 95, the Commission gave notice of the three dockets, requested the Postal Service to address certain issues, appointed a Public Representative, and provided the public with an opportunity to comment.[5]

I. Postal Service Supplemental Filing

In response to Order No. 95, the Postal Service filed redacted versions of the certifications related to the contracts filed in Docket Nos. CP2008–11, CP2008–12, and CP2008–13.[6] These versions redact the names of the contracting parties, the listed percentages, and commercial information relating to pricing factors that the Postal Service believes should not be publicly disclosed. *Id.*

II. Comments

Comments were filed by the Public Representative.[7] The Public Representative's comments focus on four areas: (1) Cost coverage; (2) appropriate classification; (3) increased access to U.S. goods by consumers; and (4) transparency and disclosure. The Public Representative asserts that the three contracts at issue in this proceeding satisfy the requirements of Commission rule 3015.5 and 39 U.S.C. 3633 regarding cost coverage, the lack of cross-subsidization, and contribution to institutional costs. Comments of Public Representative at 3. The Public Representative also believes that the contracts are substantially similar and any differences between them and the original GEPS 1 contract are immaterial. *Id.* at 4. Accordingly, the Public Representative contends that these contracts should be included as part of the GEPS 1 product category.

The remainder of the Public Representative's comments focus on the benefits of the contracts to U.S. consumers and the progress being made toward ensuring that only appropriately confidential information is submitted to the Commission under seal. *Id.* at 5–8.

III. Commission Analysis

The Postal Service proposes to add additional contracts under the GEPS 1 product that was created by Docket No. CP2008–5. In Order No. 86, the Commission noted that:

> If the Postal Service determines that it has entered into an agreement substantially equivalent to GEPS 1 with another mailer, it may file such a contract under rule 3015.5. In each case, the individual contract must be filed with the Commission, and each contract must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new contract and the pre-existing product group, GEPS 1. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.

Order No. 86 at 7. First, the Commission reviews the contracts to ensure that they are substantially equivalent to the pre-existing contract classified as part of the GEPS 1 product and thus belong as part of that product category. Second, the Commission must ensure that the contracts at issue in this proceeding independently satisfy the requirements of rule 3015.5 and 39 U.S.C. 3633.

Here, the Postal Service has filed three additional contracts (Docket Nos. CP2008–11, CP2008–12, and CP2008–13) that it believes are substantially similar to the one submitted in Docket No. CP2008–5, and accordingly should be grouped under the GEPS 1 product. Notices at 3–5. It argues these contracts share the same cost and market characteristics as the previously classified GEPS 1 contract, in particular, those of small or medium-sized businesses that mail their products directly to foreign destinations using either Express Mail International, Priority Mail International, or both. *Id.* at 4.

The Postal Service also identifies differences between proposed new contracts and the pre-existing product group, GEPS 1. *Id.* at 4–5. In particular,

[1] Notice of United States Postal Service of Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreements, August 5, 2008, filed in Docket Nos. CP2008–11, CP2008–12, and CP2008–13 (Notices).

[2] Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, July 23, 2008 (Order No. 86).

[3] Order No. 86 at 7.

[4] Docket No. CP2008–5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08–7, July 23, 2008.

[5] PRC Order No. 95, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements, August 11, 2008 (Order No. 95).

[6] Docket No. CP2008–11, United States Postal Service Response to Notice and Order Concerning Global Expedited Package Services 1 Negotiated Service Agreements and Notice of Filing of Redacted Copy of Certifications, August 13, 2008; Docket No. CP2008–12, United States Postal Service Response to Notice and Order Concerning Global Expedited Package Services 1 Negotiated Service Agreements and Notice of Filing of Redacted Copy of Certifications, August 13, 2008; Docket No. CP2008–13, United States Postal Service Response to Notice and Order Concerning Global Expedited Package Services 1 Negotiated Service Agreements and Notice of Filing of Redacted Copy of Certifications, August 13, 2008.

[7] Public Representative Comments in Response to United States Postal Service Notice of Global Expedited Package Services Contract, August 19, 2008 (Comments of Public Representative).

it notes the following differences: (1) Price differences depending on volume or postage commitments; (2) price differences due to updated costing information; (3) a link between the regulatory review process and the expiration date of the agreement; and (4) liquidated damages provisions based on individual negotiations and needs.

The Commission has reviewed the contracts in Dockets No. CP2008–11, CP2008–12, and CP2008–13 and finds those agreements to be substantially equivalent in all pertinent respects to the GEPS 1 product.[8]

Additionally, the Commission reviews the filings to ensure that they meet the requirements of rule 3015.5 and 39 U.S.C. 3633. The Commission has reviewed the financial analysis provided under seal that accompanies the agreements in all three dockets as well as the comments filed by interested persons. Based on the information provided, the Commission finds that all three proposed contracts submitted should cover their attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the proposed contracts indicates that they comport with the provisions applicable to rates for competitive products.

The revisions to the competitive product list are shown below the signature of this Order, and shall become effective upon publication in the **Federal Register**.

IV. Ordering Paragraphs

It is Ordered:

1. The contracts filed in Dockets Nos. CP2008–11, CP2008–12, and CP2008–13 are added to the product category Global Express Package Services 1 (CP2008–5).

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

[8] The differences between the contracts and the originally classified GEPS 1 contract do not appear to be substantial. However, this finding does not preclude the Commission from revisiting this issue at a future date if circumstances warrant.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

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

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

■ 2. Revise Parts A and B of Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

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

PART A—MARKET DOMINANT PRODUCTS

1000 Market Dominant Product List

First-Class Mail

Single-Piece Letters/Postcards.
Bulk Letters/Postcards.
Flats.
Parcels.
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