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Washington, DC 20002

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Presidential Documents

Title 3—

The President

Memorandum of January 23, 2009

Mexico City Policy and Assistance for Voluntary Population Planning

Memorandum for the Secretary of State [and] the Administrator of the United States Agency for International Development

The Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)), prohibits non-governmental organizations (NGOs) that receive Federal funds from using those funds ''to pay for the performance of abortions as a method of family planning, or to motivate or coerce any person to practice abortions.'' The August 1984 announcement by President Reagan of what has become known as the ''Mexico City Policy'' directed the United States Agency for International Development (USAID) to expand this limitation and withhold USAID funds from NGOs that use non-USAID funds to engage in a wide range of activities, including providing advice, counseling, or information regarding abortion, or lobbying a foreign government to legalize or make abortion available. The Mexico City Policy was in effect from 1985 until 1993, when it was rescinded by President Clinton. President George W. Bush reinstated the policy in 2001, implementing it through conditions in USAID grant awards, and subsequently extended the policy to ''voluntary population planning'' assistance provided by the Department of State.

These excessively broad conditions on grants and assistance awards are unwarranted. Moreover, they have undermined efforts to promote safe and effective voluntary family planning programs in foreign nations. Accordingly, I hereby revoke the Presidential memorandum of January 22, 2001, for the Administrator of USAID (Restoration of the Mexico City Policy), the Presidential memorandum of March 28, 2001, for the Administrator of USAID (Restoration of the Mexico City Policy), and the Presidential memorandum of August 29, 2003, for the Secretary of State (Assistance for Voluntary Population Planning). In addition, I direct the Secretary of State and the Administrator of USAID to take the following actions with respect to conditions in voluntary population planning assistance and USAID grants that were imposed pursuant to either the 2001 or 2003 memoranda and that are not required by the Foreign Assistance Act or any other law: (1) immediately waive such conditions in any current grants, and (2) notify current grantees, as soon as possible, that these conditions have been waived. I further direct that the Department of State and USAID immediately cease imposing these conditions in any future grants.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 23, 2009

[FR Doc. E9–1923
Filed 1–27–09; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of January 26, 2009

State of California Request for Waiver Under 42 U.S.C. 7543(b), the Clean Air Act

Memorandum for the Administrator of the Environmental Protection Agency

Under the Clean Air Act (42 U.S.C. 7401–7671q), the Environmental Protection Agency (EPA) sets emissions standards for new motor vehicles. California may also adopt standards for new motor vehicles if the Administrator of the EPA, based on criteria set out in the statute, waives the general statutory prohibition on State adoption or enforcement of emissions standards. Other States may adopt emissions standards for new motor vehicles if they are identical to the California standards for which a waiver has been granted and comply with other statutory criteria.

For decades, the EPA has granted the State of California such waivers. The EPA's final decision to deny California's application for a waiver permitting the State to adopt limitations on greenhouse gas emissions from motor vehicles was published in the *Federal Register* on March 6, 2008.

In order to ensure that the EPA carries out its responsibilities for improving air quality, you are hereby requested to assess whether the EPA's decision to deny a waiver based on California's application was appropriate in light of the Clean Air Act. I further request that, based on that assessment, the EPA initiate any appropriate action.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 26, 2009

[FR Doc. E9–1939
Filed 1–27–09; 8:45 am]
Billing code 6560–50–P

Presidential Documents

Memorandum of January 26, 2009

The Energy Independence and Security Act of 2007

Memorandum for the Secretary of Transportation [and] the Administrator of the National Highway Traffic Safety Administration

In 2007, the Congress passed the Energy Independence and Security Act (EISA). This law mandates that, as part of the Nation's efforts to achieve energy independence, the Secretary of Transportation prescribe annual fuel economy increases for automobiles, beginning with model year 2011, resulting in a combined fuel economy fleet average of at least 35 miles per gallon by model year 2020. On May 2, 2008, the National Highway Traffic Safety Administration (NHTSA) published a Notice of Proposed Rulemaking entitled *Average Fuel Economy Standards, Passenger Cars and Light Trucks; Model Years 2011–2015,* 73 *Fed. Reg.* 24352. In the notice and comment period, the NHTSA received numerous comments, some of them contending that certain aspects of the proposed rule, including appendices providing for preemption of State laws, were inconsistent with provisions of EISA and the Supreme Court's decision in *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007).

Federal law requires that the final rule regarding fuel economy standards be adopted at least 18 months before the beginning of the model year (49 U.S.C. 32902(g)(2)). In order for the model year 2011 standards to meet this requirement, the NHTSA must publish the final rule in the *Federal Register* by March 30, 2009. To date, the NHTSA has not published a final rule.

Therefore, I request that:

(a) in order to comply with the EISA requirement that fuel economy increases begin with model year 2011, you take all measures consistent with law, and in coordination with the Environmental Protection Agency, to publish in the *Federal Register* by March 30, 2009, a final rule prescribing increased fuel economy for model year 2011;

(b) before promulgating a final rule concerning model years after model year 2011, you consider the appropriate legal factors under the EISA, the comments filed in response to the Notice of Proposed Rulemaking, the relevant technological and scientific considerations, and to the extent feasible, the forthcoming report by the National Academy of Sciences mandated under section 107 of EISA; and

(c) in adopting the final rules in paragraphs (a) and (b) above, you consider whether any provisions regarding preemption are consistent with the EISA, the Supreme Court's decision in *Massachusetts v. EPA* and other relevant provisions of law and the policies underlying them.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 26, 2009

[FR Doc. E9–1942
Filed 1–27–09; 8:45 am]
Billing code 4910–62–P

Rules and Regulations

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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.

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FEDERAL RESERVE SYSTEM

12 CFR Part 229

Regulation CC; Docket No. R–1348; Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors (Board) is amending the routing number guide to next-day availability checks and local checks in Regulation CC to delete the reference to the Charlotte branch office of the Federal Reserve Bank of Richmond and to reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Atlanta. These amendments reflect the restructuring of check-processing operations within the Federal Reserve System.

DATES: The final rule will become effective on March 21, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. H. Yeganeh, Financial Services Manager (202/728–5801), or Joseph P. Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Sophia H. Allison, Senior Counsel (202/452–3565), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check.'' A check is considered local if it is payable by or at or through a bank located in the same Federal Reserve check-processing region as the depositary bank.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check-processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check-processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check-processing region and thus are local to one another.

On March 21, 2009, the Reserve Banks will transfer the check-processing operations of the Charlotte branch office of the Federal Reserve Bank of Richmond to the head office of the Federal Reserve Bank of Atlanta. As a result of this change, some checks that are drawn on and deposited at banks located in the Charlotte and Atlanta check-processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. To assist banks in identifying local and nonlocal checks and making funds availability decisions, the Board is amending the list of routing symbols in appendix A associated with the Federal Reserve Banks of Richmond and Atlanta to reflect the transfer of check-processing operations from the Charlotte branch office of the Federal Reserve Bank of Richmond to the head office of the Federal Reserve Bank of Atlanta. To coincide with the effective date of the underlying check-processing changes, the amendments to appendix A are effective March 21, 2009. The Board is providing notice of the amendments at this time to give affected banks ample time to make any needed processing changes. Early notice also will enable affected banks to amend their availability schedules and related disclosures if necessary and provide their customers with notice of these changes.[2]

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of the final rule. The revisions to appendix A are technical in nature and are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the § 553(b) notice and comment procedures are unnecessary. In addition, the underlying consolidation of Federal Reserve Bank check-processing offices involves a matter relating to agency management, which is exempt from notice and comment procedures.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The technical amendment to appendix A of Regulation CC will delete the reference to the Charlotte branch office of the Federal Reserve Bank of Richmond and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Atlanta. The depository institutions that are located in the affected check-processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, all paperwork collection procedures associated with Regulation CC already are in place, and the Board accordingly anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. The Fifth and Sixth Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

FIFTH FEDERAL RESERVE DISTRICT

[Federal Reserve Bank of Richmond]

Baltimore Branch

0510	2510
0514	2514
0520	2520
0521	2521
0522	2522
0540	2540
0550	2550
0560	2560
0570	2570

SIXTH FEDERAL RESERVE DISTRICT

[Federal Reserve Bank of Atlanta]

Head Office

0530	2530
0531	2531
0532	2532
0539	2539
0610	2610
0611	2611
0612	2612
0613	2613
0620	2620
0621	2621
0622	2622
0630	2630
0631	2631
0632	2632
0640	2640
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0650	2650
0651	2651
0652	2652
0653	2653
0654	2654
0655	2655
0660	2660
0670	2670
0810	2810
0812	2812
0815	2815
0819	2819
0820	2820
0829	2829
0840	2840
0841	2841
0842	2842
0843	2843
0865	2865

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 16, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–1421 Filed 1–27–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–37; MB Docket No. 08–141; RM–11471]

Television Broadcasting Services; Rio Grande City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Sunbelt Multimedia Co., licensee of station KTLM–DT, to substitute DTV channel 40 for post-transition DTV channel 20 at Rio Grande City, Texas.

DATES: This rule is effective February 27, 2009.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–141, adopted January 13, 2009, and released January 15, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by adding DTV channel 40 and removing DTV channel 20 at Rio Grande City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–1813 Filed 1–27–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 17
Wednesday, January 28, 2009

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–69; NRC–2000–0019]

Westinghouse Electric Company LLC; Consideration of Petition in Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Resolution of petition for rulemaking and closure of petition docket.

SUMMARY: The Nuclear Regulatory Commission (NRC) will consider the issues raised in a petition for rulemaking (PRM) submitted by Westinghouse Electric Company LLC (petitioner) in the NRC's rulemaking process. The petition was dated November 4, 1999, and was docketed as PRM–50–69. The petitioner requested that Table 1 in 10 CFR Part 50, Appendix G, be amended by removing requirements related to the metal temperature of the closure head flange and vessel flange regions. Specifically, the petitioner requested that footnotes (2) and (6) be removed from Table 1.

DATES: The docket for the petition for rulemaking PRM–50–69 is closed on January 28, 2009.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Further NRC action on the issues raised by this petition will be considered in the rulemaking activity directed at revising 10 CFR Part 50, Appendix G. This rulemaking activity is entitled, ''Modifications to Pressure-Temperature Limits,'' in NUREG–0936, ''NRC Regulatory Agenda: Semiannual Report,'' and is designated with rulemaking identification number RIN 3150–AG98. Information on this rulemaking activity can be monitored at the Federal rulemaking portal, *http://www.regulations.gov,* by searching on rulemaking docket ID NRC–2008–0582. The regulatory history regarding PRM–50–69, including the public comments received, can be found by searching on docket ID NRC–2000–0019. Address questions about NRC dockets to Carol Gallagher 301–415–5905; e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *PDR.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Barry Miller, Mail Stop O–9E3, Office of Nuclear Reactor Regulation, United States Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–4117, or e-mail *Barry.Miller@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

The NRC received a petition for rulemaking (ADAMS Accession No. ML003683190) from Westinghouse Electric Company LLC (the petitioner) dated November 4, 1999, which was docketed as PRM–50–69. The petitioner requested that the NRC eliminate reactor vessel closure head flange temperature requirements in 10 CFR Part 50, Appendix G, Table 1, by removing footnotes (2) and (6). On February 8, 2000, the NRC published a notice of receipt for this petition in the **Federal Register** (65 FR 6044) and requested public comment. The public comment period ended on April 24, 2000. Thirteen comments were received, all in support of the petition. These comments can be found by following the instructions given in the **ADDRESSES** section of this notice.

Resolution of Petition

The NRC will consider the issues raised in PRM–50–69, including the underlying issues relevant to the petition, and the comments submitted on PRM–50–69, in the ongoing rulemaking activity to modify the pressure and temperature limits contained in 10 CFR Part 50, Appendix G. The NRC believes that the underlying technical considerations regarding the reactor vessel closure head flange temperature are sufficiently related to the ongoing rulemaking activity on 10 CFR Part 50, Appendix G, that the issues raised in PRM–50–69 should be considered in the rulemaking activity.

The NRC is continuing work to develop the technical basis for this rulemaking. The technical basis provided by the petitioner in WCAP–15315, ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR and BWR Plants,'' Revision 1, is being considered in the development of the technical basis for the 10 CFR Part 50, Appendix G rulemaking. Although the NRC will consider the issues raised in the petition, the petitioner's concerns may not be addressed exactly as the petitioner has requested. After the conclusion of the NRC's development of the technical basis for the 10 CFR Part 50, Appendix G rule, the NRC will determine whether to adopt the petitioner's requested rulemaking changes. During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before issuing a final rule.

If the ongoing work to establish the technical basis for this rulemaking does not support the issuance of a proposed rule, the NRC will issue a supplemental **Federal Register** notice that addresses why the petitioner's requested rulemaking changes were not adopted by the NRC. With this resolution of the petition, the NRC closes the docket for PRM–50–69.

Dated at Rockville, Maryland, this 2nd day of January, 2009.

For the Nuclear Regulatory Commission.

Bruce S. Mallett,

Acting Executive Director for Operations.

[FR Doc. E9–1372 Filed 1–27–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV51

[FWS–R4–ES–2008–0058; 92210–1117–0000–FY08–B4]

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Alabama Sturgeon (Scaphirhyncus suttkusi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period on the proposed revised designation of critical habitat for the Alabama sturgeon (*Scaphirhyncus suttkusi*) under the Endangered Species Act of 1973, as amended (Act). We are extending the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated draft economic analysis, and the amended required determinations following a public hearing that will take place January 28, 2009.

DATES: *Written Comments:* We will consider comments received on or before February 9, 2009.

Public Hearings: We will hold a public hearing on January 28, 2009, at the Alabama Southern Community College in Monroeville, AL (see **ADDRESSES**). The hearing is open to all who wish to provide formal, oral comments regarding the proposed revised critical habitat and will be held from 7 p.m. to 9 p.m., central time, with an open house from 5:30 p.m. to 6:30 p.m., central time.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R4–ES–2008–0058, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.
- *Public Hearing:* A public hearing will be held (see **DATES**) at the Nettles Auditorium at Alabama Southern Community College, 2800 South Alabama Avenue, Monroeville, AL 36460.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Jeff Powell, Aquatic Species Biologist, U.S. Fish and Wildlife Service, Alabama Field Office, 1208 Main Street, Daphne, AL 36526; telephone: 251–441–5858; facsimile: 251–441–6222. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed designation of critical habitat for the Alabama sturgeon in the **Federal Register** on May 27, 2008 (73 FR 30361). The proposed rule opened a 60-day comment period, which closed on July 28, 2008.

On December 30, 2008, we published a proposed revised designation of critical habitat for the Alabama sturgeon and announced the opening of a second public comment period and the scheduling of a public hearing (73 FR 79770). We also announced the availability for public comment of a draft economic analysis and an amended required determinations section of the proposal. We further sought comment on our proposal to change the first primary constituent element from its original description because we have determined that the original wording failed to indicate that the flow needs of the species are relative to the season of the year.

The second comment period was opened for 30 days from December 30, 2008, to January 29, 2008. We are extending the comment period an additional 11 days to allow all interested parties an opportunity to comment after the January 28, 2009, public hearing. Our December 30, 2008, revised proposed rule (73 FR 79770) specifies the information that we seek from the public. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

Authors

The primary authors of this notice are the staff members of the Southeast Regional Office, U.S. Fish and Wildlife Service.

Authority

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

Dated: January 15, 2009.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–1455 Filed 1–27–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 74, No. 17

Wednesday, January 28, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Correction

January 23, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

The following notice that was published in the **Federal Register** on Friday, January 23, 2009 (Volume 74, No. 14, page 4134) contained an error in the OMB Control Number. The correct OMB Control Number should be 0579–0281, this number replaces 0579–New that was originally published in the notice.

Animal and Plant Health Inspection Service

Title: Treatment of Fruits and Vegetables.

OMB Control Number: 0579–0281.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–1812 Filed 1–27–09; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–930

Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: January 28, 2009.

SUMMARY: The Department of Commerce (the Department) has determined that circular welded austenitic stainless pressure pipe from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3518 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 2008, the Department published in the **Federal Register** its preliminary determination that circular welded austenitic stainless pressure pipe from the PRC is being, or is likely to be, sold in the United States at LTFV, as provided in the Act. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 51788 (September 5, 2008) (*Preliminary Determination*). For the *Preliminary Determination*, the Department calculated a 22.03 percent dumping margin for mandatory respondent Winner Machinery Enterprise Co., Ltd. (Winner) and assigned that dumping margin to the PRC–wide entity and Zhejiang Jiuli Hi–Tech Metals Co., Ltd. (Jiuli), a separate rate applicant.

The Department began its verification of Winner's information on September 22, 2008. The verification was scheduled for September 22, 2008 through September 26, 2008. On September 25, 2008, Winner terminated verification, requested that the verifiers not take copies of any of the documents that were reviewed or presented at verification, and submitted a letter to the Department stating that Winner ''hereby withdraws from this antidumping investigation and does not wish to further participate.'' *See* Winner's September 25, 2008 letter to the Department. The Department documented the events that occurred at verification in a memorandum to the file dated October 3, 2008.

Petitioners[1] and Winner submitted case briefs on October 22, 2008, and rebuttal briefs on October 27, 2008.

Winner filed submissions containing new factual information on October 16, 2008, November 28, 2008, and December 2, 2008. The Department rejected Winner's November 28, 2008, and December 2, 2008 submissions on December 2, 2008 and December 4, 2008, respectively, as untimely filed.

[1] Petitioners in this investigation are Bristol Metals, L.P., Felker Brothers Corp., Marcegaglia USA, Inc., Outokumpu Stainless Pipe Inc., and the United Steel Workers of America (collectively, Petitioners).

Period of Investigation

The period of investigation (POI) is July 1, 2007, through December 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, January 2008). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

Changes since the Preliminary Determination

We have made the following changes to our analysis and the dumping margins assigned in the *Preliminary Determination*:

1. We considered Winner to be part of the PRC–wide entity, and revised the dumping margin that was assigned to the PRC–wide entity as total adverse facts available (AFA).
2. We assigned Jiuli a separate rate based on an average of the dumping margins used in the initiation of this investigation.

For a detailed discussion of the dumping margin assigned to the PRC–wide entity as AFA, see ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China,'' dated January 21, 2009 (Decision Memorandum) which is hereby adopted by this notice. For a detailed discussion of Jiuli's dumping margin, see the ''Separate Rates'' section below.

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 addressed in the Decision Memorandum. Appendix I to this notice contains a list of the issues that are addressed in the Issues and Decision Memorandum. Parties can find a complete discussion of the issues and corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room 1117 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and electronic version are identical in content.

Non–Market Economy Treatment

In the *Preliminary Determination*, the Department considered the PRC to be a non–market economy (NME) country. *See Preliminary Determination*, 73 FR at 51789. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). No party has commented on the Department's classification of the PRC as an NME country. Therefore, for the final determination, we continue to consider the PRC to be an NME country.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that Jiuli and Winner demonstrated their eligibility for separate–rate status. *See Preliminary Determination*, 73 FR at 51792. Since the publication of the *Preliminary Determination*, no parties commented on the separate rate determinations. We continue to find that the evidence placed on the record of this investigation by Jiuli demonstrates both a *de jure* and *de facto* absence of government control with respect to its exports of the merchandise under investigation. Thus, we continue to find that Jiuli is eligible for separate–rate status. However, as explained below, we have determined that it is appropriate to apply total AFA to Winner and deny the company a separate rate.

Normally the dumping margin for separate rate companies is determined based on the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. *See* section 735(c)(5)(A) of the Act. In the *Preliminary Determination* we assigned Jiuli the dumping margin established for Winner, *i.e.*, 22.03 percent. *See Preliminary Determination*, 73 FR at 51792 and 51795. Since Winner is no longer receiving a separate rate, this methodology is not appropriate. In cases where the estimated weighted–average dumping margins for all individually investigated respondents are zero, *de minimis*, or based entirely on AFA, the Department may use any reasonable method to assign a rate to the separate rate companies. *See* section 735(c)(5)(B) of the Act. In this case, where there are no mandatory respondents receiving a calculated rate, we find that applying the simple average of the initiation rates to Jiuli is both reasonable and reliable for purposes of establishing a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sodium*

Hexametaphosphate From the People's Republic of China, 73 FR 6479 (February 4, 2008) and the accompanying Issues and Decision Memorandum at Comment 2. Therefore, the Department will assign a separate rate to Jiuli using the average of the initiation margins, pursuant to its practice.

The average initiation margin assigned to Jiuli is based on secondary information. According to section 776 (c) of the Act, when the Department relies on secondary information, it shall, to the extent practicable, corroborate that information. During our pre–initiation analysis of the petition, we examined the information used in the petition as the basis of export price and normal value (NV) and, where appropriate, revised the calculations used to derive the petition dumping margins in determining the initiation dumping margins. Also, during our pre–initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated various elements of the export price and NV information. For this final determination, we compared the average of the initiation margins to Winner's highest CONNUM–specific margin and found that the average of the initiation margins does not exceed this margin. No other information was available for corroboration purposes. Based on the foregoing, we have concluded that the average of the initiation dumping margins is reliable and has probative value and, therefore, we consider this average dumping margin to be corroborated, to the extent practicable.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination. Because Winner withdrew from this proceeding during verification, we determine that the use of facts otherwise available is warranted with respect to Winner. *See* the Decision Memorandum at Comment 1.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may draw an inference that is adverse to the interests of that party in selecting information from the petition, the final determination from the investigation, a previous administrative review, or any information placed on the record. The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994) at 870, reflects the Department's practice that it may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate fully.'' It also instructs the Department to consider, in employing adverse inferences, ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.*

By withdrawing from verification, Winner has failed to cooperate to the best of its ability. Therefore, we find it appropriate to use an inference that is adverse to Winner's interest in selecting from among facts otherwise available. By doing so, we ensure that Winner will not obtain a more favorable rate by failing to cooperate. For a complete discussion of our analysis, see the Decision Memorandum at Comment 1.

Moreover, because Winner withdrew from verification and prevented the Department from verifying its responses with regard to separate rate status, the Department has no basis upon which to grant Winner a separate rate. Thus, although Winner remains a mandatory respondent, the Department, as AFA, is considering Winner to be part of the PRC–wide entity.

The PRC–Wide Rate

In the *Preliminary Determination*, the Department found that certain companies did not respond to our requests for information. *See Preliminary Determination*, 73 FR at 51788. We treated these PRC producers/exporters as part of the PRC–wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id.* No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Moreover, for the reasons noted above, we also consider Winner to be part of the PRC–wide entity.

As noted above, section 776(a)(2) of the Act provides that, if an interested party or any other person withholds information that has been requested by the administering authority, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination. Since companies within the PRC–wide entity withheld information requested by the Department, and Winner, which is part of the PRC–wide entity, did not allow its information to be verified, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, we determine, as in the *Preliminary Determination*, that the use of facts otherwise available is appropriate to determine the PRC–wide rate.

As stated above, section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also SAA* at 870 (1994). We determine that, because the PRC–wide entity did not respond to our requests for information, and Winner prevented the Department from verifying its information, the PRC–wide entity has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting a dumping margin from among the facts otherwise available, an adverse inference is appropriate for the PRC–wide entity.

In this final determination, we have assigned to the PRC–wide entity the highest CONNUM–specific calculated dumping margin, *i.e.*, 55.21 percent. *See* Decision Memorandum. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.

Since we begin with the presumption that all companies within an NME country are subject to government control, and because only Jiuli has overcome that presumption, we are applying the single antidumping rate (*i.e.*, the PRC–wide entity rate) identified above to all entries of subject merchandise, except for entries from Jiuli. Other than Jiuli, none of the other exporters of subject merchandise from the PRC demonstrated entitlement to a separate rate. *See, e.g., Synthetic Indigo From the People's Republic of China:*

Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000).

Combination Rates

In *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221 (February 26, 2008) (*Initiation Notice*), the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in Policy Bulletin 05.1, available at http://ia.ita.doc.gov/. Policy Bulletin 05.1, states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries.''

Final Determination Margins

We determine that the following percentage dumping margins exist for the POI:

Manufacturer/Exporter	Margin (Percent)
Zhejiang Jiuli Hi–Tech Metals Co., Ltd. Produced by: Zhejiang Jiuli Hi–Tech Metals Co., Ltd.	10.53%
PRC–Wide Rate	55.21%

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of circular welded austenitic stainless pressure pipe from the PRC, as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after September 5, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combination listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide entity rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 21, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretaryfor Import Administration.

Appendix I

List of Issues

Comment 1: Whether, as Adverse Facts Available for the PRC–Wide Entity, the Department Should Use the Petition, Initiation, or Preliminary Determination Margins, and Whether Those Margins Should be Adjusted Using Thai, Instead of Indian, Surrogate Values

[FR Doc. E9–1827 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Amended Final Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 20, 2008, the Department of Commerce (''Department'') published in the **Federal Register** the final results of the second administrative review and concurrent new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) (''*Final Results*'') and accompanying Issues and Decision Memorandum (August 8, 2007) (''Issues and Decision Memo''). The period of review (''POR'') covered January 1, 2006, through December 31, 2006. We are amending our *Final*

Results to correct ministerial errors made in the calculation of the antidumping duty margin for Fujian Lianfu Forestry Co./Fujian Wonder Pacific Inc./Fuzhou Huan Mei Furniture Co., Ltd./Jiangsu Dare Furniture Co., Ltd. (collectively, ''the Dare Group'') and Teamway Furniture (Dong Guan) Co., Ltd., and Brittomart Inc. (collectively ''Teamway''), pursuant to section 751(h) of the Tariff Act of 1930, as amended (''Act'') [1]. These corrections will also affect the dumping margins for the other companies in the review to which a separate rate applies. *See* the Ministerial Error Memorandum for the Final Results of the 2006 Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic China, dated January 23, 2009.

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

FOR FURTHER INFORMATION CONTACT: Paul Stolz, 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) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2008,[2] Petitioners,[3] Teamway,[4] and American Signature Inc. (''ASI''), interested parties, filed timely ministerial error allegations with respect to the Department's antidumping duty margin calculation in the *Final Results.* On September 3, 2008, Petitioners and Dare Group filed timely rebuttal comments.

Scope of Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[5] highboys,[6] lowboys,[7] chests of drawers,[8] chests,[9] door chests,[10] chiffoniers,[11] hutches,[12] and armoires;[13] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[14]

[1] Dumping margins calculated with respect to the new shipper review concurrent with this administrative review are unaffected by these amended final results.

[2] This is the date on which the bracketing final versions of these submissions were received by the Department.

[3] American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company.

[4] The ministerial error allegations filed by Teamway with the Department did not contain a narrative, it only contained attachments. However, the copies Teamway served to parties were complete. On September 5, 2008, Teamway filed the narrative of its ministerial error allegations with the Department.

[5] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[6] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[7] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[8] A chest of drawers is typically a case containing drawers for storing clothing.

[9] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[10] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[11] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[12] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[13] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[14] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[15] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24″ in width, 18″ in depth, and 49″ in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

[16] Cheval mirrors are, *i.e.*, any framed, tiltable mirror with a height in excess of 50'' that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[17] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom

Continued

(9) jewelry armoires;[15] (10) cheval mirrors;[16] (11) certain metal parts;[17] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; and (13) upholstered beds.[18]

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as ''wooden * * * beds'' and under subheading 9403.50.9080 of the HTSUS as ''other * * * wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors * * * framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Ministerial Errors

A ministerial error is defined in section 751(h) of the Act and further clarified in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''

After analyzing all interested parties' comments, we have determined, in accordance with 19 CFR 351.224(e), that ministerial errors existed in certain calculations for Dare Group and Teamway in the *Final Results.* Correction of these errors results in a change to Dare Group's and Teamway's final antidumping duty margins. Additionally, the rate change for Dare Group and Teamway also affects the dumping margins for the other companies subject to the administrative review that receive a separate rate. The dumping margin for the PRC-wide entity remains unchanged. For a detailed discussion of these ministerial errors, as well as the Department's analysis, *see* the Memorandum titled: Ministerial Error Memorandum for the Final Results of Reviews of Wooden Bedroom Furniture from the People's Republic of China, dated January 23, 2009, (''Ministerial Error Allegation Memorandum''). The Ministerial Error Allegation Memorandum is on file in the Central Records Unit, room 1117 in the main Department building. The index for this memorandum is attached as Appendix 1.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of wooden bedroom furniture from the PRC. The revised weighted-average dumping margins are detailed below. For company-specific calculations, see ''Analysis Memorandum for the Amended Final Results for Dare Group,'' dated January 23, 2009, and ''Analysis Memorandum for the Amended Final Results for Teamway'' dated January 23, 2009. Listed below are the weighted average dumping margins resulting from this administrative review and new shipper review including the revised margins resulting from these amended final results:

WOODEN BEDROOM FURNITURE FROM THE PRC

Exporter	Weighted-average margin (percent)
Fujian Lianfu Forestry Co., Ltd., aka Fujian Wonder Pacific Inc. (Dare Group)	39.44
Fuzhou Huan Mei Furniture Co., Ltd. (Dare Group)	39.44
Jiangsu Dare Furniture Co., Ltd. (Dare Group)	39.44
Teamway Furniture (Dong Guan) Co. Ltd., Brittomart Inc.	25.06
BNBM Co., Ltd. (aka Beijing New Material Co., Ltd.)	33.38
Classic Furniture Global Co., Ltd.	33.38
Dalian Guangming Furniture Co., Ltd.	33.38
Decca Furniture Ltd., aka Decca	33.38
Dong Guan Golden Fortune Houseware Co., Ltd.	33.38
Dongguan Mingsheng Furniture Co., Ltd.	33.38
Dongguan Yihaiwei Furniture Limited	33.38
Fortune Furniture Ltd. and its affiliate, Dongguan Fortune Furniture Ltd.	33.38
Gaomi Yatai Wooden Ware Co., Ltd., Team Prospect International Ltd., Money Gain International Co.	33.38
Guangming Group Wumahe Furniture Co., Ltd.	33.38
Inni Furniture	33.38
Mei Jia Ju Furniture Industrial (Shenzhen) Co. Ltd.[19]	216.01
Meikangchi (Nantong) Furniture Company Ltd.	33.38
Nanjing Nanmu Furniture Co., Ltd.	33.38
Po Ying Industrial Co.	33.38
Qingdao Beiyuan-Shengli Furniture Co., Ltd., Qingdao Beiyuan Industry Trading Co. Ltd.	33.38
Shenzhen Tiancheng Furniture Co., Ltd., Winbuild Industrial Ltd., Red Apple Furniture Co., Ltd. and Red Apple Trading Co., Ltd.	33.38
Shenyang Kunyu Wood Industry Co., Ltd.	33.38
Shenzhen Xingli Furniture Co., Ltd.	33.38
Tianjin First Wood Co., Ltd.	33.38
Union Friend International Trade Co., Ltd.	33.38
Winmost Enterprises Limited	33.38

furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.90.7000.

[18] Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 007).

WOODEN BEDROOM FURNITURE FROM THE PRC—Continued

Exporter	Weighted-average margin (percent)
Winny Overseas, Ltd.	33.38
Yangchen Hengli Co., Ltd.	33.38
Yichun Guangming Furniture Co., Ltd.	33.38
Zhong Cheng Furniture Co., Ltd.	33.38
PRC-Wide Rate [20]	216.01

[19] Mei Jia Ju Furniture Industrial (Shenzhen) Co. Ltd. is subject to the new shipper review, not the administrative review. Therefore, it dumping margin is unaffected by these amended final results of the administrative review.
[20] The PRC-Wide Rate is unaffected by these amended final results of the administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed for these final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rate

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, *see Final Results*.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the amended final results of the administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after August 8, 2008, the date of publication of the *Final Results*, for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rates shown for those companies (except if the rate is *de minimis*, *i.e.*, less than 0.5 percent, a zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 216.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: January 23, 2009.

Ronald Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX 1

General Issues

Issue 1: Whether the Department Mis-calculated/Mis-applied the Surrogate Values (''SV'') for 29 Factors of Production (''FOP'')

Teamway-Specific Issues

Issue 2: Whether the Department Incorrectly Calculated Market Economy Purchase (''MEP'') Prices for Certain Inputs.

Issue 3: Whether the Department Applied an Incorrect Truck Freight to Certain Inputs.

Issue 4: Whether the Department Omitted Mirrors from Teamway's Normal Value Calculations.

Issue 5: Whether the Department Properly Corrected the Electricity and Water Usage Rates for the Verification Minor Correction.

Issue 6: Whether the Department Incorrectly Applied Adverse Facts Available (''AFA'') to Veneers.

Issue 7: Whether the Department Incorrectly Assigned FOPs to Control Numbers (''CONNUMS'') (''pre-POR CONNUMS'') Sold but not Produced during the Period of Review (''POR'').

Issue 8: Whether the Department Incorrectly Included Certain Transactions in its Margin Calculation for the Final Results.

Dare Group-Specific Issues

Issue 9: Whether the Department Correctly Applied the Cubic-Meters-to-Pieces Conversion Factor for Semi-finished Furniture.

Issue 10: Whether the Department Should Apply the Average Piece-Types Conversion Factor for CONNUMs with No Specific Conversion Factor Reported to Convert Semi-finished Furniture from its Reported Quantity in Cubic Meters (''M3'') to Pieces.

Issue 11: Whether the Department Failed to Weight-Average the Market Economy Purchase Prices and Average Unit Values (''AUV'').

Issue 12: Whether the Department Failed to Exclude Non-Subject Piece Types From its Margin Calculations.

Issue 13: Whether the Department Included Certain FOPs in the Normal Value Calculation.

Issue 14: Whether the Department Failed to Use the Correct Conversion Factor for VENEERPLY.

Issue 15: Whether the Department Incorrectly Converted the Currency of BIRCHWOOD_SV.

Issue 16: Whether the Department Used the Correct Conversion Factors for Certain FOP Freight Costs.

Issue 17: Whether the Department Implemented its Intended AFA with Respect to a Type of Plywood.

Issue 18: Whether the Department Failed to Incorporate Minor Corrections Accepted at Verification.
Issue 19: Whether the Department Mistakenly Used an MEP from a Subsidy Country to Value an FOP.
Issue 20: Whether the Department Used the Correct Kilogram (''kg'')/Square Meter (''M2'') Converter for Lauan Veneer (''LAUANVENEER'').
Issue 21: Whether the Department Used an Incorrect SV for Truck Freight in the Cost Calculation String for LEATHEROID.
Issue 22: Whether the Department Incorrectly Included Packing Labor in the Calculation of the Cost of Manufacture (''COM'') with Respect to CONNUMS Reported in the ''Sold Not Produced'' (''SNP'') FOP Database.
Issue 23: Whether the Department Made an Error in the Calculation of the Surrogate Financial Ratios.
Issue 24: Whether the Department Failed to Deflate SVs Based on 2007 Import Data.
Issue 25: Whether the Department Applied the Correct kg/Cubic Meter (''M3'') Converter for Fiberboard.
Issue 26: Whether the Department Used an Incorrect SV for Philippine Harmonized Schedule (''HS'') Number 4407.99.00 in the SNP SV Spreadsheet to Value Several Types of Wood and Wood Parts.

[FR Doc. E9–1861 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Third New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (''*Order*''). The Department is conducting new shipper reviews (''NSR'') of the *Order*, covering the period of review (''POR'') of August 1, 2007, through January 31, 2008. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer–specific assessment rates are above *de minimis*.

EFFECTIVE DATE: January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Alan Ray or Emeka Chukwudebe, 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) 482–5403 or (202) 482–0219, respectively.

SUPPLEMENTARY INFORMATION:

General Background

On February 25, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c), the Department received NSR requests from Asia Commerce Fisheries Joint Stock Company (''Acom'') and Hiep Thanh Seafood Joint Stock Company (''Hiep Thanh). Both companies certified that they are the producers and exporters of the subject merchandise upon which the requests were based.

On April 7, 2008, the Department initiated antidumping duty new shipper reviews on frozen fish fillets from Vietnam covering the two companies. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 72 FR 54428 (April 7, 2008).

On April 14, 2008, the Department issued original questionnaires to both Hiep Thanh and Acom. Between May and October 2008, Hiep Thanh and Acom submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

Extension of Time Limits

On September 25, 2008, the Department extended the deadline for the preliminary results of this review by 120 days, to January 20, 2009. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews*, 73 FR 55496 (September 25, 2008)[1] (''*Extension*'').

Surrogate Country and Surrogate Values

On December 12, 2008, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (''FOP''). On January 5, 2009, Petitioners[2] submitted surrogate value data. No other party submitted surrogate country or surrogate value data.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production (''FOP'') for Hiep Thanh between November 12–20, 2008. *See* Memorandum to the File from Alan Ray, Case Analyst through Alex Villanueva, Program Manager, Verification of the Sales and Factors Response of Hiep Thanh in the Antidumping New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (''Vietnam''), dated December 12, 2008 (''Hiep Thanh Verification Report'').

Scope of the Order

The product covered by this Order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly–flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone–in, cross–section cuts of dressed fish. Nuggets are the belly–flaps. The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species Pangasius including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[3] This

[1] Where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will continue its longstanding practice of reaching our determination on the next business day. In this instance, the preliminary results will be released no later than January 21, 2009.

[2] The Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (collectively, ''Petitioners'').

[3] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater

Order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.

Non–Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non–market (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Adminstrative Review and Partial Rescission*, 73 FR 15479 (March 24, 2008) (''*3rd AR Final Results*''). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determinations

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this review, Hiep Thanh and Acom submitted complete responses to the separate rates section of the Department's NME questionnaire. The evidence submitted by Hiep Thanh and Acom includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the company's operations and selection of management. The evidence provided by Hiep Thanh and Acom supports a finding of a *de jure* absence of government control over their export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the Respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In their questionnaire responses, Hiep Thanh and Acom submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that Hiep Thanh and Acom have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Hiep Thanh and Acom for these new shipper reviews. We found that the new shipper sales by Hiep Thanh and Acom were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by Hiep Thanh and Acom, and our verification of Hiep Thanh, as well the companies' eligibility for separate rates (*see* Separate Rates Determination section above), we preliminarily determine that Hiep Thanh and Acom have met the requirements to qualify as new shippers during this POR. Therefore, for the purposes of these preliminary results of review, we are treating Hiep Thanh and Acom's sales of subject merchandise to the United States as appropriate transactions for these new shipper reviews.[4]

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (''FOPs''), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

[4] For more detailed discussion of this issue, please *see* Memorandum from Alan Ray, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Bona Fide Nature of the Sale in the Third Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Hiep Thanh and Acom., (January 16, 2009).

The Department determined that Bangladesh, Pakistan, India, Sri Lanka, Philippines and Indonesia are countries comparable to Vietnam in terms of economic development.[5] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process (March 1, 2004) (''Surrogate Country Policy Bulletin''). Since the less–than-fair value investigation, we have determined that Bangladesh is comparable to Vietnam in terms of economic development and has surrogate value data that is available and reliable. In this proceeding, we received no comments regarding surrogate country selection. Since no information has been provided in this review that would warrant a change in the Department's selection of Bangladesh from the prior segments, we continue to find that Bangladesh is the appropriate surrogate country here because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad–market average. *See* Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Matthew Renkey, Senior Case Analyst, Subject: Fourth Antidumping Duty Administrative Review and New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country (September 2, 2008).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Affiliation

Section 771(33) of the Act provides that:

The following persons shall be considered to be affiliated' or affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer of director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: ''For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restrain or direction over the other person.''

We preliminarily find that the Hiep Thanh and HTVN Seafood Inc. (''HTVN'') to be affiliated parties within the meaning of section 771(33)(E) of the Act, due to common ownership. Hiep Thanh owns the majority of HTVN. *See* Hiep Thanh Verification Report at 20. In addition, two of Hiep Thanh's shareholders are the other owners of HVTN. *Id.* Therefore, for these preliminary results we will use the constructed export price (''CEP'') price paid to HTVN, the U.S. importer, by its first unaffiliated U.S. customer of subject merchandise during the POR.

U.S. Price

A. Constructed Export Price

For Hiep Thanh, we based the U.S. price on CEP in accordance with section 772(b) of the Act, for sales made on behalf of Hiep Thanh by its U.S. affiliate, HTVN, to unaffiliated purchasers. We based CEP on packed, delivered or ex–warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses.

B. Export Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Acom because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States.

During the POR, Hiep Thanh made additional shipments of frozen fish fillets to the United States, beyond the reported CEP sales. Based on a request by the Department and prior to verification, Hiep Thanh reported these additional shipments of subject merchandise in a revised U.S. sales database in its October 29, 2008, supplemental questionnaire response.

In our request for these additional sales we cited Article 303(3)[6] of the North American Free Trade Agreement and 19 CFR 181.53(a)(1)(i)[7] as support for requesting that Hiep Thanh report these additional shipments. In its October 29, 2008, questionnaire response, Hiep Thanh argued that these additional shipments should not be considered in the margin calculation because any merchandise stored in bond in the United States which is then exported to another NAFTA country should not be subject to review. *See* Hiep Thanh's October 29, 2008, Questionnaire Response at 5–6. According to Hiep Thanh, to the best of its knowledge, these additional shipments were to be re–exported to another NAFTA country. *Id.* at 1–6. In reviewing the CBP entry documents collected from CBP and those examined at verification, we noted that some of these additional sales of subject merchandise from Hiep Thanh to certain unaffiliated U.S. importers were entered and classified as entries for consumption, while for other entries, we could not determine whether they were for consumption. Therefore, where POR subject merchandise entries exported by Hiep Thanh were classified

[5] *See Memorandum from Kelley Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: List of Surrogate Countries*, dated January 15, 2009.

[6] Article 303(3) of the NAFTA requires that if a good is imported pursuant to a duty deferral program and subsequently exported to the territory of another Party, the exporting Party shall assess customs duties as if the exported good had been withdrawn for domestic consumption. Customs treats bonded warehouses as duty deferral programs in a NAFTA context. *See* 19 CFR 181.53(a)(1)(ii).

[7] In *Entry of Certain Steel Products*, 68 FR 13835 (March 21, 2003), Customs stated that ''under 19 CFR 181.53, goods withdrawn from a U.S. duty-deferral program (such as a Customs bonded warehouse) for exportation to Canada must be treated as entered or withdrawn for consumption.'' In *CTL Plate from Italy* we concluded that temporary import bond entries of subject merchandise to the United States and re-exported to a NAFTA party should be considered entries for consumption and, should properly be included in the margin calculation. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Quality Steel Plate Products from Italy*, 64 FR 73234 (December 29, 1999) (''*CTL Plate from Italy*'').

as ''for consumption,'' we will include those sales in the margin calculation for these preliminary results.

For the additional sales of subject merchandise which do not appear as entries for consumption, we will gather additional information (*e.g.*, CBP entry documentation) after these preliminary results and continue to examine this issue for the final results. For the final results, we will consider whether Article 303(3) of NAFTA applies to these additional shipments.

In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. We calculated EP based on the price to unaffiliated purchases entered into the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. We have reviewed each of these services and expenses reported by Acom and Hiep Thanh and find that they were provided by an NME vendor or paid for using Vietnamese currency. Thus, we based the deduction of these movement charges on surrogate values. *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Alan Ray, Case Analyst, Office 9: Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, (January 16, 2008) (''Surrogate Values Memo'') for details regarding the surrogate values for movement expenses.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of-production methodology if: (1) the merchandise is exported from a non–market economy country; and (2) the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

Although Hiep Thanh reported the inputs used to produce the main input to the processing stage (food–sized fish), for the purposes of these preliminary results, we are not valuing those inputs when calculating the NV. In the past, the Department has used an intermediate input methodology when the accuracy of the normal value based on an integrated FOP calculation would be sacrificed, (*e.g.*, *Fish Fillets from Vietnam*[8] and *Garlic from China*[9]). In this case, because a substantial number of farming FOPs were significantly revised and numerous other factors used in the production process were not reported,[10] valuing Hiep Thanh's farming FOPs would be less reliable and compromise the accuracy of the NV. Instead, we preliminary find that valuing the intermediate input, food–size fish, would be more accurate in this case. As a result, we will begin the NV calculation at the processing stage and apply a surrogate value for whole, food–sized fish.

Acom reported the inputs beginning with the food–size fish because it is only a processor of fish fillets and had no hatchery or farming FOPs during the POR. Therefore, it only reported FOPs associated with the processing and packing stages of production. As such, the Department will account for all of Acom's reported inputs in the normal value calculation.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Hiep Thanh and Acom during the POR. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Bangladeshi surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index (''WPI'') for the subject country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 29509 (May 24, 2004). However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POI with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index rate for Bangladesh, or the WPI for India or Indonesia (for certain surrogate values where Bangladeshi data could not be obtained), as published in the International Financial Statistics of the International Monetary Fund.

Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's website.

For further details regarding the surrogate values used for these preliminary results, see the Surrogate Values Memo.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period August 1, 2007, through January 31, 2008:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Hiep Thanh	0.00

[8] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003); *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum, at Comment 3.

[9] *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 26330 (May 4, 2006), and accompanying Issues and Decision Memorandum, at Comment 1.

[10] *See* Hiep Thanh Verification Report at 2.

CERTAIN FROZEN FISH FILLETS FROM VIETNAM—Continued

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Acom	0.00

Disclosure

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[11]

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of these new shipper reviews, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per–unit basis.[12] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) per–unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this is above *de minimis*.

Cash–Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Hiep Thanh or Acom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Hiep Thanh or produced and exported Acom, the cash deposit rate will be zero; (2) for subject merchandise exported by Hiep Thanh or Acom but not manufactured by Hiep Thanh or Acom, the cash deposit rate will continue to be the Vietnam–wide rate (*i.e.*, 63.88 percent); and (3) for subject merchandise manufactured by Hiep Thanh or Acom, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer–exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4.

Dated: January 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–1722 Filed 1–27–09; 8:45 am]

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[11] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[12] We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–802

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the Second New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) (''*VN Shrimp Order*''). The Department is conducting a new shipper review (''NSR'') of the *VN Shrimp Order*, covering the period of review (''POR'')

of February 1, 2007, through January 31, 2008. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer–specific assessment rates are above *de minimis*.

EFFECTIVE DATE: January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, 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) 482–0219.

SUPPLEMENTARY INFORMATION:

General Background

On February 28, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c), the Department received a NSR request from BIM Seafood Joint Stock Company (''BIM Seafood''). On March 26, 2008, the Department initiated a new shipper review for BIM Seafood. *See Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 73 FR 18510 (April 4, 2008).

On April 15, 2008, the Department issued its non–market economy (''NME'') questionnaire to BIM Seafood. BIM Seafood responded to the Department's NME questionnaire and subsequent supplemental questionnaires between May and December 2008.

Extension of Time Limits

On September 17, 2008, the Department extended the time limits for these preliminary results. *See Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 73 FR 54788 (September 23, 2008).

Surrogate Country and Surrogate Values

On December 1, 2008, BIM Seafood submitted surrogate country comments and surrogate value data. No other party submitted surrogate country or surrogate value data.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production (''FOP'') for BIM Seafood between November 3–11, 2008. *See* Memorandum to the File from Emeka Chukwudebe, Case Analyst through Alex Villanueva, Program Manager, Verification of the Sales and Factors Response of BIM Seafood Joint Stock Company (''BIM Seafood'') in the Antidumping New Shipper Review of frozen Warmwater Shrimp from the Socialist Republic of Vietnam (''Vietnam''), dated December 17, 2008.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell–on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp–based product: 1) that is produced from fresh (or thawed–from-frozen) and peeled shrimp; 2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Non–Market Economy Country Status

In every Vietnamese antidumping duty (''AD'') case conducted by the Department, Vietnam has been treated as a NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005, 71007 (December 8, 2004); and *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006) (''*FFF1 Final Results*''); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative*, 72 FR 13242 (March 21, 2007) (''*FFF2 Final Results*''). No party to this proceeding has contested such

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this review, BIM Seafood submitted complete responses to the separate rate section of the Department's NME questionnaire. The evidence submitted by BIM Seafood includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the company's operations and selection of management. The evidence provided by BIM Seafood supports a finding of a *de jure* absence of government control over their export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the Respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, BIM Seafood submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) BIM Seafood sets its own export prices independent of the government and without the approval of a government authority; (2) BIM Seafood retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) BIM Seafood has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on BIM Seafood's use of export revenues. Therefore, the Department preliminarily finds that BIM Seafood has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by BIM Seafood for this new shipper review. We found that the new shipper sale by BIM Seafood was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by BIM Seafood, and our verification thereof, as well as the company's eligibility for a separate rate (*see* Separate Rates Determination section above), we preliminarily determine that BIM Seafood has met the requirements to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating BIM Seafood's sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.[2]

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (''FOPs''), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia are countries comparable to Vietnam in terms of economic development.[3] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process (March 1, 2004) (''Surrogate Country Policy Bulletin''). Since the less–than-fair value investigation, we have determined that Bangladesh is comparable to Vietnam in terms of economic development and has surrogate value data that is available and reliable. In this proceeding, we only received comments from BIM Seafood in which it argues that the Department should again select Bangladesh as the surrogate country based on the two factors listed in the Surrogate Country Policy Bulletin. Since no information has been provided in this review that would warrant a change in the Department's selection of Bangladesh from the prior segments, we continue to

[2] For more detailed discussion of this issue, please *see* Memorandum from Emeka Chukwudebe, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to the File, ''Bona Fide Nature of the Sale in the Second Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: BIM Seafood,'' (January 16, 2009).

[3] *See Memorandum from Kelley Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: New Shipper Review of Certain Warmwater Shrimp from Vietnam: List of Surrogate Countries*, dated January 15, 2009.

find that Bangladesh is the appropriate surrogate country here because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad–market average. *See* Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Irene Gorelik, Senior Case Analyst, Subject: Second Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of a Surrogate Country (February 28, 2008), which is on the record of this review.

U.S. Price

A. Export Price (''EP'')

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for BIM Seafood because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted foreign inland freight and brokerage and handling from the starting price to the unaffiliated purchasers. We have reviewed each of these services and expenses reported by BIM Seafood and find that they were provided by an NME vendor or paid for using Vietnamese currency. Thus, we based the deduction of these movement charges on surrogate values. *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Emeka Chukwudebe, Case Analyst, Office 9: Antidumping Duty New Shipper of Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, (January 16, 2008) (''Surrogate Values Memo'') for details regarding the surrogate values for movement expenses.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

Although the respondents reported the inputs used to produce the main input to the processing stage (raw head–on, shell–on shrimp), for the purposes of these preliminary results, we are not valuing those inputs when calculating NV. Rather, our NV calculation begins with a valuation of the shrimp input (raw head–on, shell–on shrimp) used to produce the merchandise under investigation for the following three reasons. First, in reviewing BIM Seafood's direct, indirect and contract labor hours for hatchery and farming, we noted that they did not keep track of the actual hours worked. BIM Seafood officials explained that there are no real fixed–time labor shifts due to the 24–hour cyclical growth period of shrimp. Second, BIM Seafood did not report water usage for the hatchery and farming stages of production. In its October 16, 2008, questionnaire response, BIM Seafood explained that water consumption at the hatchery and farming stages was not available from its own books and records. *See* BIM Seafood's Questionnaire Response at 3. However, during verification we noted that water was used in ponds and tanks throughout the hatchery and farming stages. Third, due to inadequate FOP descriptions, certain material inputs at the hatchery and farming stages are not easily identifiable for the purpose of selecting surrogate values. When asked to provide a detailed description for these material inputs, BIM Seafood only provided a broad, general description. For instance, BIM Seafood's first Section D response contains two FOPs described as ''enzymes.'' When asked in a supplemental response to provide the HTS classification for these inputs such as these two items, BIM Seafood only provided a broad 4–digit HTS number. At verification, BIM Seafood was unable to provide additional information regarding the descriptions and more specific HTS classifications for these and other inputs and we noted that a more detailed level of specificity did not appear to be tracked by BIM seafood's book and records. Because BIM Seafood could not provide more detailed information regarding these and other inputs, the Department is unable to determine appropriate surrogate values for these inputs.

In the past, the Department has used an intermediate input methodology when the accuracy of the normal value based on an integrated FOP calculation would be sacrificed, (*e.g.*, *Fish Fillets from Vietnam*[4] and *Garlic from China*[5]). In this case, because the labor reported was not based on actual hours worked, water was unreported, and the surrogate valuation of the inadequately described hatchery and farming FOPs would be speculative at best, we have determined to use an intermediate input methodology. As a result, we will begin the normal value calculation at the processing stage and apply a surrogate value for raw, head–on, shell–on shrimp.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by BIM Seafood during the POR. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Bangladeshi surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–

[4] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 3.

[5] *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) and accompanying Issues and Decision Memorandum at Comment 1, *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329, 26330 (May 4, 2006), and accompanying Issues and Decision Memorandum, at Comment 1.

1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index (''WPI'') for the subject country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 29509 (May 24, 2004). However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POI with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index rate for Bangladesh, or the WPI for India or Indonesia (for certain surrogate values where Bangladeshi data could not be obtained), as published in the International Financial Statistics of the International Monetary Fund.

Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's website.

For details regarding the surrogate values used to calculate NV, see the Surrogate Values Memo.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2007, through January 31, 2008:

CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/Exporter	Weighted–Average Margin (Percent)
BIM Seafood Join Stock Company (BIM Seafood)	0.00

Disclosure

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping duty new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[6]

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of this new shipper review, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per–unit basis.[7] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) per–unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this is above *de minimis*.

Cash–Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from BIM Seafood entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by BIM Seafood, the cash deposit rate is zero; (2) for subject merchandise exported by BIM Seafood but not manufactured by BIM Seafood, the cash deposit rate will continue to be the Vietnam–wide rate (*i.e.*, 25.76 percent); and (3) for subject merchandise manufactured by BIM Seafood, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer–exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's

[6] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[7] We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–1711 Filed 1–27–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–939)

Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 28, 2009.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that certain tow behind lawn groomers and certain parts thereof (''lawn groomers'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The estimated dumping margins are shown in the ''Preliminary Determination Margins'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081or (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2008, the Department received a petition concerning imports of certain non–motorized tow behind lawn groomers and certain parts thereof from the PRC filed in proper form by Agri–Fab Inc. (''Agri–Fab'', hereafter referred to as ''Petitioner''). *See* Petition for the Imposition of Antidumping Duties: Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China, dated June 24, 2008 (''Petition''). The Department initiated an antidumping duty investigation of lawn groomers from the PRC on July 21, 2008. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 42315 (July 21, 2008) (''*Initiation Notice*'').

On July 14, 2008, the Department requested quantity and value (''Q&V'') information from the twelve companies that were identified in the Petition as potential producers or exporters of lawn groomers from the PRC. *See* Exhibit I–19 of the Petition. The Department received timely responses to its Q&V questionnaire from the following companies: Qingdao Huatian Hand Truck Co., Ltd., Jiashan Superpower Tools Co., Ltd., T.N. International, Inc., Nantong Duobang Machinery Co., Ltd., and Princeway Furniture (Dong Guan) Co., Ltd. Five companies to which the Department sent the Q&V questionnaire received the questionnaire but did not respond. These non–responsive companies were: Hangzhou Geesun International Co., Ltd., Qingdao Huandai Tools Co., Ltd., Qingdao Taifa Group Co., Ltd., Maxchief Investments Ltd., and Qingdao EA Huabang Instrument Co., Ltd.

With regard to two additional companies, World Factory, Inc., and Sidepin, Ltd., on July 21, 2008, we spoke with Federal Express, via telephone, and were informed that, although World Factory, Inc., originally accepted delivery of the Q&V questionnaire, it ultimately rejected our mailing and returned the package to Federal Express. In addition, on July 21, 2008, we spoke via telephone with DHL and were informed that DHL was unable to deliver our mailing to Sidepin, Ltd., due to a ''bad address.''[1] *See* Memorandum to The File, from Maisha Cryor, Senior Import Compliance Specialist, Regarding ''Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Summary of Issuance of Quantity and Value Questionnaires,'' dated July 21, 2008.

On August 21, 2008, the International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of lawn groomers from the PRC. *See CertainTow–Behind Lawn Groomers and Certain Parts Thereof from China Determinations Investigation Nos. 701–TA–457 and 731–TA–1153 (Preliminary*), 73 FR 49489 (August 21, 2008).

On August 18, 2008, the Department selected Jiashan Superpower Tools Co., Ltd. (''Superpower''), and Princeway Furniture (Dong Guan) Co., Ltd. (''Princeway''), as mandatory respondents and issued antidumping duty questionnaires to the companies. *See* Memorandum regarding ''Selection of Respondents for the Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China,'' dated August 18, 2008 (''Respondent Selection Memorandum'').

Superpower and Princeway submitted timely responses to the Department's antidumping duty questionnaire on September 24, 2008, and October 14, 2008, respectively. On July 23, 2008, and July 30, 2008, the Department received separate–rate applications from Nantong D&B Machinery Co., Ltd., and Qingdao Huatian Truck Co., Ltd., respectively.

The Department issued supplemental questionnaires to, and received responses from, Superpower and Princeway from September through December 2008. Petitioner submitted comments to the Department regarding Princeway's and Superpower's responses to sections C and D of the antidumping duty questionnaire on October 24, 2008 and additional comments on Princeway's submissions on December 2, 2008.

On September 30, 2008, the Department released a memorandum to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value selection. *See* Memorandum to All Interested Parties Regarding Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China (''PRC''). On October 17, 2008, and October 28, 2008, Petitioner and Princeway submitted comments and rebuttal comments,

[1] The petitioner provided contact information for the twelve Chinese producers/exporters of lawn groomers named in the Petition. *See* Petition at Exhibit I-19. However, upon noticing that several of the addresses provided were incomplete, the Department asked the petitioner to update the aforementioned contact information to account for full addresses, *e.g.*, contact name, postal code, street names and numbers, *etc. See* the Department's July 3, 2008, supplemental questionnaire at 3. In response, the petitioner provided updated contact information, but noted that this information represented its ''best attempt using reasonably available information to update the Chinese manufacturer and exporter contact information.'' *See* Supplement to the Petition at 2 and Exhibit 2, dated July 8, 2008.

respectively, on the appropriate surrogate country and surrogate values.

On November 5, 2008, the Petitioner made a request for a 50–day postponement of the preliminary determination. On November 17, 2008, the Department extended this preliminary determination by fifty days. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 73 FR 67836 (November 17, 2008).

Period of Investigation

The period of investigation (''POI'') is October 1, 2007, through March 31, 2008. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, June 2008. *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The scope of this investigation covers certain non–motorized tow behind lawn groomers (''lawn groomers''), manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of these investigations, even if the lawn groomer is designed to perform additional non–subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of these investigations. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigations.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.*, dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.*, a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (''broadcast spreader''), a rotating agitator that allows the media to be released at a consistent rate (''drop spreader''), or any other configuration.

Lawn dethatchers with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigations. Other lawn groomers–sweepers, aerators, and spreaders–with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigations.

Also included in the scope of the investigations are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units–when imported with one or more lawn grooming modules–with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigations. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigations. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by these investigations. For purposes of these investigations, ''unassembled lawn groomers'' consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components'':

1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
2) a sweeper brush;
3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
4) a spreader hopper;
5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
6) dethatcher tines;
7) aerator spikes, plugs, or other aerating component; or
8) a hitch.

The major components or parts of lawn groomers that are individually covered by these investigations under the term ''certain parts thereof'' are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (*e.g.*, churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers–sweepers, aerators, and spreaders–with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which

incorporate an aerator component (*e.g.*, ''drum–style'' spike aerators).

The lawn groomers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in these investigations.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of issuance of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice*, 73 FR at 42316. On December 30, 2008, Brinly–Hardy Company (''Brinly–Hardy''), a domestic producer of the subject merchandise, submitted comments on the scope of the investigation. We have given all interested parties an opportunity to submit comments. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to file, ''Deadline for Comments on Brinly–Hardy Company's December 30, 2008 Submission: Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers from the People's Republic of China,'' dated January 5, 2009. We will evaluate the comments for the final results.

Non–Market Economy Treatment

The Department considers the PRC to be a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof (TRBs), Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *TRBs, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, where the available information does not allow the Department to determine normal value (''NV'') pursuant to section 773(a) of the Act, the Department will base NV on the value of the NME producer's factors of production. *See* section 773(c)(1) of the Act. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise. The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries that are at a level of economic development comparable to that of the PRC. *See* Memorandum regarding Request for a List of Surrogate Countries for the Antidumping Duty Investigation of Tow–Behind Lawn Groomers (''TBLG'') from the People's Republic of China (''PRC'')'' dated September 30, 2008 (''Policy Memorandum'').

As noted above, in October 2008, Petitioner and Princeway submitted comments on the appropriate surrogate country. In their comments, each party stated that India satisfies the statutory criteria for surrogate country selection because it is at a comparable level of economic development with the PRC and it is a significant producer of comparable merchandise that is sufficiently similar to the subject merchandise. However, since India does not produce or export lawn groomers, Petitioner and Princeway disagreed on the definition of what constitutes comparable merchandise. In its comments, Petitioner claimed that hand trucks represent the most comparable merchandise to lawn groomers. Princeway, in its comments, argued that agricultural implements should be used as comparable merchandise.

After evaluating interested parties' comments, the Department selected India as the surrogate country for this investigation and decided that because the lawn groomers and hand trucks industries use many of the same raw material inputs and similar production processes, hand trucks constitute comparable merchandise. For further discussion, see Memorandum from Zhulieta Willbrand, International Trade Compliance Analyst, to Abdelali Elouaradia, Office Director, ''Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Selection of a Surrogate Country,'' dated January 21, 2009. In sum, the Department determined that: 1) India is at a level of economic development comparable to that of the PRC; and 2) India is a significant producer of merchandise comparable to the subject merchandise. Upon the publication of the preliminary results, the Department notes that interested parties may submit additional information on comparable merchandise within the confines of the new factual information submission deadlines. *See* 19 CFR 351.301(b)(1).

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate–rate status in NME investigations. *See Initiation Notice*, 73 FR at 42318–19. The process requires exporters and producers to submit a separate–rate status application. *See Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005) (''*Policy Bulletin 05.1*''), available at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. However, the standard for eligibility for a separate rate, which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities, has not changed.

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's practice to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final*

Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). In accordance with the separate–rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

Two separate rate applicants, Qingdao Huatian Truck Co., Ltd. (''Huatian''), and Nantong D & B Machinery Co., Ltd. (''Nantong''), and one mandatory respondent, Superpower, stated that they are partially Chinese–owned companies. Therefore, the Department must analyze whether the mandatory respondent and separate rate applicants can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. Each company provided company–specific information to demonstrate that it operates free from *de jure* and *de facto* government control, and therefore, is entitled to a separate rate.

An additional mandatory respondent, Princeway, provided company–specific separate–rate information and stated that the standards for the assignment of separate rates have been met because it is a privately–owned company incorporated in the British Virgin Islands and based in Hong Kong. *See* Princeway's ''Separate Rate Application,'' dated September 19, 2008, and ''Separate Rate Application Supplemental Response Questionnaire,'' dated October 21, 2008. Because Princeway is foreign owned, it is not necessary to undertake additional separate–rates analysis for the Department to determine that the export activities of Princeway are independent from the PRC government's control. Accordingly, Princeway is eligible for a separate rate. *See, e.g., Brake Rotors From the People's Republic of China: Final Results of the Tenth New Shipper Review*, 69 FR 52228 (August 25, 2004).

Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Huatian, Nantong and Superpower indicates that there are no restrictive stipulations associated with their export and/or business licenses and that there are legislative enactments decentralizing control of the companies. The Department's analysis of the record evidence supports a preliminary finding of absence of *de jure* control. *See* ''Response to the Separate Rate Application'', dated September 4, 2008, ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated September 27, 2008, and ''Response to the Separate Rate Application Supplemental Questionnaire dated October 7, 2008,'' dated October 15, 2008, from Nantong (''Nantong's SRA''). *See also* ''Huatian's Separate Rate Application,'' dated September 29, 2008, ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated October 9, 2008, and ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated November 4, 2008 (''Huatian's SRA''). For Superpower, see ''Response to the Separate Rate Application,'' dated September 24, 2008, and ''Response to the Separate Rate Application Supplemental Questionnaire,'' dated October 23, 2008 (''Superpower's SRA'').

Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

In this case, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of governmental control with respect to Huatian, Nantong and Superpower based on record statements and supporting documentation showing that the companies: (1) set their own export prices independent of the government and without the approval of a government authority; (2) retain their proceeds from sales and make independent decisions regarding disposition of profits or financing of losses; (3) have the authority to negotiate and sign contracts and other agreements; and (4) have autonomy from the government regarding the selection of management. *See* Nantong's SRA, Huatian's SRA and Superpower's SRA.

The evidence placed on the record of this investigation by Huatian, Nantong and Superpower demonstrates an absence of *de jure* and *de facto* government control with respect to these exporters' sales of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have preliminarily granted a separate rate to all three exporters. The Department has calculated company–specific dumping margins for the two mandatory respondents, Superpower and Princeway, and assigned to Huation and Nantong, a dumping margin equal to a simple average of the dumping margins calculated for the two mandatory respondents.

Additionally, we note that while we received the Q&V information from T.N. International, Inc., one of the five companies which responded to the Q&V questionnaire, the company was not selected by the Department as a mandatory respondent. As indicated in the *Initiation Notice*, where T.N. International, Inc., had an opportunity to request a separate rate, it failed to do so. Consequently and according to our practice, we assigned to T.N. International, Inc., preliminarily the PRC–wide rate.

The PRC–Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[2] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI.[3] We have

[2] The Department received only five timely responses to the requests for Q&V information that it sent to twelve potential exporters identified in the Petition.

[3] *See* Respondent Selection Memorandum.

treated the non–responsive PRC producers/exporters as part of the PRC–wide entity because they have not demonstrated their eligibility for a separate rate.

Section 776(a)(2) of the Act provides that the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified.

As noted above, the PRC–wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC–wide dumping margin on facts available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4991–92 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); see also Statement of Administrative Action, accompanying the Uruguay Round Agreements Act , H.R. Rep. No. 103–316, Vol. I at 843 (1994) (''*SAA*''), reprinted in 1994 U.S.C.C.A.N. 4040 at 870. Because the PRC–wide entity did not respond to the Department's request for information, the Department has concluded that the PRC–wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (''AFA''): (1) information derived from the petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) the highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decisions Memorandum at ''Facts Available.'' Here, we assigned the PRC–wide entity the dumping margin calculated for Superpower, which exceeds the highest margin alleged in the petition and is the highest rate calculated in this investigation. Pursuant to section 776(c) of the Act, we do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information. *See also SAA* at 870. The PRC–wide dumping margin applies to all entries of the merchandise under investigation except for entries of subject merchandise from Superpower,[4] Princeway, Nandong and Huatian.

Fair Value Comparisons

To determine whether Princeway and Superpower sold lawn groomers to the United States at LTFV, we compared the weighted–average export price (''EP'') of the lawn groomers to the NV of the lawn groomers, as described in the ''U.S. Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, for both Superpower and Princeway, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP for Superpower and Princeway by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses and foreign brokerage and handling expenses.

We based these movement expenses on surrogate values where the service was purchased from a PRC company. For details regarding our EP calculation, *see* Analysis Memoranda for Superpower and Princeway, dated January 21, 2009.

Normal Value

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by Princeway and Superpower to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs, as well as an adjustment for the byproduct. We valued the factors of production using prices and financial statements from India, the surrogate country selected for this investigation or where appropriate, the prices paid for the input, in accordance with 19 CFR 351.408(c)(1).[5] In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non–export average values, product–specific, tax–exclusive, and contemporaneous with, or closest in time to, the POI. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing materials by multiplying the amount of the factor consumed in producing subject merchandise by the

[4] Because the Department based the PRC-wide dumping margin on Superpower's dumping rate, both rates are equal. However, Superpower has its own separate rate and is not part of the PRC-wide entity.

[5] Superpower reported that it purchased no factors of production from market economy suppliers during the POI. *See* Superpower's October 14, 2008, Section D Response at D-5. Princeway purchased certain factors of production from market economy suppliers. *See* Princeway's October 10, 2008, Section D Response at 8

average unit value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Wholesale Price Index (''WPI'').

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea and Thailand because in other proceedings the Department found that these countries maintain broadly available, non–industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1; *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.[6] Thus, we have not used prices from these countries in calculating the Indian import–based surrogate values.

We valued raw materials and packing materials obtained from non–market economy suppliers using Indian import statistics. *See* Surrogate Value Memorandum. We valued water using data from the Maharashtra Industrial Development Corporation [7] because that data include a wide range of industrial water tariffs. This source provides 344 industrial water rates within the Maharashtra province from June 2003: 172 for the ''inside industrial areas'' usage category, and 172 for the ''outside industrial areas'' usage category. *See* Surrogate Value Memorandum.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country–wide, publicly–available information on tax–exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the most recently calculated regression–based wage rate, which relies on 2005 data. This wage rate can be found on the Import Administration's home page. *See* ''Expected Wages of Selected NME Countries,'' available at *http://ia.ita.doc.gov/wages/index.html* (revised May 2008). The source of these wage rate data on the Import Administration's web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Princeway and Superpower. *See* Surrogate Value Memorandum.

As noted above, we valued inland truck freight expenses using a deflated per–unit average rate calculated from data on the following web site: *http://www.infobanc.com/logistics/logtruck.htm*. *See* Surrogate Value Memorandum. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using WPI data.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by: (1) Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, (2) Kejirwal Paper Ltd. in the less than fair value investigation of certain lined paper products from India, and (3) Essar Steel in the antidumping duty administrative review of hot–rolled carbon steel flat products from India.[8] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006); and *Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006), unchanged in *Certain Hot–Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). We inflated the brokerage and handling rate using the appropriate WPI inflator. *See* Surrogate Value Memorandum.

We valued factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, using the financial ratios calculated from the 2006–2007 audited financial statement of one Indian producer of hand trucks: Godrej & Boyce Manufacturing Company Limited. *See* Surrogate Value Memorandum.

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information with which to value factors of production in the final determination within 40 days after the date of publication of the preliminary determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the

[6] In addition, as explained in the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See Omnibus Trade and Competitiveness Act of 1988*, Conference Report to Accompanying H.R. Rep. 100-576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

[7] Website available at *http://www.midcindia.org*.

[8] Use of these averages is consistent with the Department's normal practice to calculate brokerage and handling expenses. Absent product-specific data, the Department's preference is to average these data sources because they represent values for numerous transactions that are available for a range of products and minimize the potential distortions that might arise from a single price source. One value, taken in isolation, could differ significantly when compared across a range of products, values, and special circumstances of a single transaction. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision Memorandum at Comment 5.

exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*, 73 FR at 42319. This change in practice is described in *Policy Bulletin 05.1*, which states:

> {W}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1 at 6.

Preliminary Determination Margins

The Department has determined that the following weighted–average dumping margins exist for the POI:

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Jiashan Superpower Tools Co., Ltd.[9]	324.43
Princeway Furniture (Dong Guan) Co., Ltd.[10]	12.07
Nantong D & B Machinery Co., Ltd.[11]	168.25
Qingdao Huatian Truck Co., Ltd.[12]	168.25
PRC–wide Entity	324.43

[9] Jiashan Superpower Tools Co., Ltd., manufactures and exports subject merchandise.
[10] Princeway Furniture (Dong Guan) Co., Ltd., manufactures and exports subject merchandise.
[11] Nantong D & B Machinery Co., Ltd., manufactures and exports subject merchandise.
[12] Qingdao Huatian Truck Co., Ltd., manufactures and exports subject merchandise.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of lawn groomers from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Department has determined in its *Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971 (November 24, 2008) (''*CVD Lawn Groomers Prelim*''), that the product under investigation, exported and produced by Superpower, benefitted from an export subsidy. Normally, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted–average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007). Therefore, for merchandise under consideration exported and produced by Superpower entered or withdrawn from warehouse, for consumption on or after publication date of this preliminary determination, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted–average margin indicated above, adjusted for the export subsidy rate determined in *CVD Lawn Groomers Prelim* (*i.e.*, Income Tax Reduction for Export–Oriented Enterprises countervailable subsidy of 0.15 percent *ad valorem*). The adjusted cash deposit rate is 324.28 percent. Furthermore, *CVD Lawn Groomers Prelim* indicates preliminarily that Superpower received a countervailable subsidy of 0.64 percent *ad valorem* under the ''Refund of Enterprise Income Taxes on FIE Profits Reinvested in an EOE'' program. *See CVD Lawn Groomers Prelim* at 70978. This subsidy contains both domestic and export subsidy components. However, for the preliminary results of this investigation, the Department will not be able to apply the export subsidy component to Superpower's antidumping margin. For the final results, if applicable, the Department will calculate the subsidy rates for each component and apply the export subsidy portion to Superpower's antidumping margin.

Regarding all separate–rate recipients that were not selected as mandatory respondents, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the average of the margins calculated for the mandatory respondents, adjusted for their respective export subsidy rates, if applicable, from *CVD Lawn Groomers Prelim*.

For the remaining exporters, pursuant to section 733(d)(1)(B), we will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as follows: (1) the rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States

is materially injured, or threatened with material injury, by reason of imports of lawn groomers, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1) and (2). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. *See* 19 CFR 351.309(c)(2) and 19 CFR 351.309(d)(2).

In accordance with section 774(a)(1) of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties that wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 18, 2008, and December 23, 2008, Princeway and Superpower, respectively, requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Princeway and Superpower agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4–month period to a 6–month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b)(2)(ii), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise (see Respondent Selection Memorandum), and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–1721 Filed 1–28–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–931)

Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has made a final determination that countervailable subsidies are being provided to producers and exporters of circular welded austenitic stainless pressure pipe (CWASPP) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, IA Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2209.

SUPPLEMENTARY INFORMATION:

Petitioner

The petitioners in this investigation are Bristol Metals LLP, Felker Brothers Corp., Marcegaglia U.S.A., Inc., Outokumpu Stainless Pipe, Inc., and the United Steelworkers (petitioners).

Period of Investigation

The period for which we are measuring subsidies, or period of investigation (POI), is January 1, 2007, through December 31, 2007.

Case History

On July 10, 2008, we published in the **Federal Register** the preliminary determination that countervailable subsidies are being provided to producers and exporters of CWASPP from the PRC, as provided under section 703 of the Tariff Act of 1930, as amended (the Act). *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 39657 (July 10, 2008) (*Preliminary Determination*). On July 15, 2008, the Winner Companies filed timely allegations of significant ministerial errors contained in the Department's *Preliminary Determination*. After reviewing the allegations, we determined that the *Preliminary Determination* included significant ministerial errors as described under 19 CFR 351.224(g). Therefore, in accordance with 19 CFR 351.224(e), we made changes to the *Preliminary Determination*. On August 7, 2008, we published in the **Federal Register** the amended preliminary determination. *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Notice of Amended Preliminary Countervailing Duty Determination* 73 FR 45954 (August 7, 2008) (*Amended Preliminary Determination*).

On August 8, 2008, the GOC requested a hearing. On August 11, 2008, petitioners requested a hearing.

On December 16, 2008, we received case briefs regarding the *Preliminary Determination* from the Government of the People's Republic of China (GOC), petitioners, and Winner Stainless Tube Co., Ltd. (Winner), Winner Steel Products (Guangzhou)(WSP), and Winner Machinery Enterprise Company Limited (Winner HK) (collectively the Winner Companies). On December 17, 2008, the GOC filed a letter correcting inadvertent errors its case brief. On December, 22, 2008, the GOC, petitioners, and the Winner Companies submitted rebuttal briefs.

On January 7, 2009, the Department issued a post–preliminary determination decision memorandum regarding the new subsidy allegations that were filed by petitioners on May 30, 2008. On January 12, 2009, we received case briefs regarding this post–preliminary determination decision memorandum from GOC, petitioners, and the Winner Companies. On 14, 2009, the GOC, petitioners, and the Winner Companies submitted rebuttal briefs on this decision memorandum.

The GOC and petitioners withdrew their requests for a hearing on January 8, 2009.

Scope of Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States. They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Scope Comments

Interested parties submitted comments on the scope of investigation. Those comments are fully addressed in the preliminary determination of the companion AD investigation. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 51788, 51789 (September 5, 2008).

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission (ITC) must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On March 25, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of subject merchandise. *See Welded Stainless Steel Pressure Pipe from China*, USITC Pub. 3986, Inv. Nos. 701–TA–454 and 731–TA–1144 (Preliminary) (March 2008); and *Welded Stainless Pressure Pipe from China*, 73 FR 16911 (Preliminary)(March 31, 2008).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the accompanying January 21, 2008, memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping Duty/Countervailing Duty Operations, which is titled Issues and Decision Memorandum for Final Determination (Decision Memorandum) and is on file in Central Records Unit (CRU), room 1117 of the main Commerce building. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Application of Facts Available, Including the Application of Adverse Inferences

For purposes of this final determination, we have relied on facts available and have used adverse inferences to determine the countervailable subsidy rates for Froch, which is one of the two mandatory respondents, in accordance with sections 776(a) and (b) of the Act. A full discussion of our decision to apply adverse facts available (AFA) is presented in the Decision Memorandum in the section ''Application of Facts Available and Use of Adverse Inferences'' and in ''Analysis of Comments'' at Comment 11.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, the Winner Companies and Froch Enterprise Co. Ltd. (Froch). With respect to the all–others rate, section 705(c)(5)(A)(i) of the Act provides that the all others rate is to be the weighted average of the rates established for respondents individually investigated, excluding zero or *de minimis* rates or rates based entirely on facts available. Based on the facts and circumstances of this investigation, we find that section 705(c)(5)(A)(i) is applicable in determining the all others rate. In this case, the Department selected two mandatory respondents as representative of all producers/exporters of CWASPP from the PRC. One of the two company respondents, Froch, did not respond to the questionnaire, and thus we have determined its countervailable subsidy rates based entirely on adverse facts available Because the Winner Companies' rate is not *de minimis* and is not based entirely on facts available, we determine the Winner Companies' rate to be the all others rate.

Exporter/Manufacturer	Net Subsidy Rate
Winner Stainless Steel Tube Co. Ltd. (Winner)/ Winner Steel Products (Guangzhou) Co., Ltd. (WSP)/ Winner Machinery Enterprises Company Limited (Winner HK) (Collectively the Winner Companies)	1.10 percent *ad valorem*
Froch Enterprise Co. Ltd. (Froch) (also known as Zhangyuan Metal Industry Co. Ltd.)	299.16 percent ad valorem
All Others	1.10 percent *ad valorem*

As a result of our *Preliminary Determination* and pursuant to section

703(d) of the Act, we instructed the U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of CWASPP from the PRC which were entered or withdrawn from warehouse, for consumption on or after July 10, 2008, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with sections 703(d) of the Act, we will be issuing instructions to CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered, or withdrawn from warehouse, on or after November 7, 2008, but to continue the suspension of liquidation of all entries from July 10, 2008 through November 6, 2008.

We will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 21, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Whether the Department Reasonably Treated China as a Developed Country for CVD *De Minimis* Purposes

Comment 2: Whether Winner HK Should be Treated as a PRC Entity for Purposes of Attribution

Comment 3: Whether the Total Sales Figure Used as the Denominator in the *Preliminary Determination* and Interim Decision Memorandum is Correct

Comment 4: Whether the Department Has the Legal Authority to Apply the CVD Law to the PRC While Simultaneously Treating the PRC as an NME in Parallel Antidumping Investigations

Comment 5: Whether the Provision of SSC to SOEs Constitutes the Provision of a Good by a Government Authority

Comment 6: Whether the Sale of HRS from Privately–Held Trading Companies Constitutes a Financial Contribution Under the Act

Comment 7: Whether the Provision of SSC is Specific and the Applicability of the Department's Use of AFA in its Determination of *De Facto* Specificity

Comment 8: Whether the Department Should Countervail the Provision of Land

Comment 9: Whether the Department Should Countervail FIE Tax Programs that are Industry, Regionally, or Export/Domestic Use Neutral

Comment 10: Whether the Department's Prevailing Interest Rate Methodology Should be Used to Calculate any Subsidy in this Case

Comment 11: Whether the Department's Choice of Adverse Facts Applied to the Non–Cooperating Respondent is Contrary to Law

Comment 12: Whether the Department's Methodology for Determining the All–Others rate in its Amended Preliminary Results is Unreasonable

[FR Doc. E9–1829 Filed 1–27–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Notice of Initiation of Countervailing Duty Changed Circumstances Review: Certain Pasta from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Marsan Gida Sanayi ve Ticaret A.S. (''Marsan'') pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.216 and 351.221(c)(3), the Department of Commerce (''the Department'') is initiating a changed circumstances review of the countervailing duty (''CVD'') order on certain pasta (''Pasta'') from Turkey. Marsan, a producer of pasta, claims that Gidasa Sabanci Gida Sanayi ve Ticaret A.S. (''Gidasa'') changed its corporate name to Marsan and, therefore, Marsan should be entitled to the same cash deposit rate as its predecessor company, Gidasa.

EFFECTIVE DATE: January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Shelly Atkinson, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0116.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the CVD order on Pasta from Turkey. *See Notice of Countervailing Duty Order: Certain Pasta (''Pasta'') From Turkey*, 61 FR 38546 (July 24, 1996). Since then, the Department has completed two administrative reviews of this CVD order but is not currently conducting an administrative review. *See Certain Pasta From Turkey: Final Results of Countervailing Duty Administrative Review*, 66 FR 64398 (December 13, 2001); *Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*, 71 FR 52774 (September 7, 2006) (''*Pasta from Turkey: Results of Administrative Review*''). Also, with respect to Gidasa, in July 2003, the Department determined that Gidasa was the successor–in-interest to Maktas Makarnacilik ve Ticaret A.S. (''Maktas'') and that Gidasa was entitled to the cash deposit rate assigned to Maktas in the most recently completed CVD administrative review. *See Notice of*

Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta From Turkey, 68 FR 41554 (July 14, 2003); *see also Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*, 66 FR 64398 (December 13, 2001).

On December 3, 2008, Marsan filed a request for an expedited changed circumstances review to determine whether it is the successor–in-interest to Gidasa, in accordance with section 751(b) of the Act and 19 CFR 351.216 for the antidumping (''AD'') and CVD orders on pasta from Turkey. Marsan submitted certain information in support of its claim that it is the successor–in-interest to Gidasa and argued that it should be entitled to Gidasa's current CVD cash deposit rate of 0.0 percent. *See* Marsan's December 3, 2008 submission entitled Pasta From Turkey: Request for Expedited Changed Circumstances Review of AD/CVD Orders; *see also Pasta from Turkey: Final Results of Administrative Review*, 71 FR at 52775. In response to Marsan's request regarding the AD order, on January 7, 2009, the Department published its initiation of a changed circumstances review and stated that it will seek further information for the preliminary determination. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Pasta From Turkey*, 74 FR 681 (January 7, 2009).

Scope of the Order

Imports covered by this review are shipments of certain non–egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Initiation of Countervailing Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party, or receipt of information, concerning a CVD order which shows changed circumstances sufficient to warrant a review of the order. On December 3, 2008, Marsan submitted its request for an expedited changed circumstances review. With its request, Marsan submitted certain information related to its claim including information describing the acquisition of Gidasa in March 2008 by MGS Marmara Gida Sanayi ve Ticaret A.S. (''MGS''). Following the acquisition of Gidasa, in June 2008, MGS changed Gidasa's name to Marsan. Based on the information Marsan submitted, the Department has determined that changed circumstances sufficient to warrant a review exist. See 19 CFR 351.216(d). Additionally, we note that there is no concurrent administrative review of Gidasa in which this name change could be examined.

In the context of a changed circumstances review of an AD order based on a name change or a change in the company's ownership or structure, the Department relies on its ''successor–in-interest'' analysis to determine whether the successor remains essentially the same entity as the predecessor so that it is appropriate to impose the existing AD cash deposit rate of the predecessor on the successor. However, the AD successor–in-interest test may not fully address whether it is appropriate to apply the CVD cash deposit rate of a previously examined company to its claimed successor.

In *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results of Countervailing Duty Changed Circumstances Review*, 71 FR 75937 (December 19, 2006), the Department indicated that it intended to further consider the issue of whether alternative or additional successorship criteria, other than those the Department relies upon in an AD successor–in-interest analysis, would be more appropriate in a successorship–type CVD changed circumstances review context. Moreover, the Department stated that it anticipated issuing a **Federal Register** notice inviting the public to submit comments on the issue. Subsequently, the Department published *Countervailing Duty Changed Circumstances Reviews; Request for Comment on Agency Practice*, 72 FR 3107 (January 24, 2007), in which the Department reiterated that the AD successor–in-interest analysis may not be entirely relevant in the CVD context, highlighted various considerations that distinguish CVD changed circumstances reviews from AD changed circumstances reviews, and provided the public an opportunity to comment on whether any changes to the Department's practice regarding such reviews was warranted and, if so, what those changes should entail.

In the instant changed circumstances review, we intend not to apply the AD successor–in-interest methodology to determine whether Marsan is the successor–in-interest to Gidasa. The Department anticipates requesting additional information for this review and will publish in the **Federal Register** a notice of the preliminary results of the CVD changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its CVD changed circumstances review not later than 270 days after the date on which the review is initiated.

Because the Department is not using the standard AD successor–in-interest methodology to examine this changed circumstances review and the Department will seek further information from Marsan, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Thus, the Department is not issuing the preliminary results of its CVD changed circumstances review at this time.

The current requirement for a cash deposit of estimated countervailing duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice of initiation is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: January 16, 2009.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–1713 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On January 16, 2009, Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P. (collectively, ''Ivaco''), filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the Final Results of the 2006–2007 Antidumping Duty Administrative Review made by the International Trade Administration, respecting Carbon and Certain Alloy Steel Wire Rod from Canada. The determination was published in the **Federal Register** (73 FR 77005) on December 18, 2008. The NAFTA Secretariat has assigned Case Number USA–CDA–2009–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230. (202) 482–5432.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on January 16, 2009, requesting a panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 17, 2009);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 2, 2009); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 23, 2009.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. E9–1858 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils From Belgium: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

FOR FURTHER INFORMATION CONTACT: Alexander Montoro at (202) 482–0238 or David Layton at (202) 482–0371; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2008, the Department published a notice of initiation of administrative review of the countervailing duty order on stainless steel plate in coils from Belgium, covering the period January 1, 2007 through December 31, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 37409 (July 1, 2008).

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

Due to the complex nature of the countervailable subsidy practices and a merger involving the respondent company, the Department requires additional time to review and analyze the information and to issue supplemental questionnaires. Therefore, it is not practicable to complete this review within the originally anticipated time limit, and the Department is extending the time limit for completion of the preliminary results by 120 days to not later than May 31, 2009, in accordance with section 751(a)(3)(A) of the Act. However, May 31, 2009, falls on a Sunday and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary results is now no later than June 1, 2009.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 16, 2009.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–1720 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Community-based Restoration Program Progress Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 30, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robin Bruckner, 301–713–0174 or via the Internet at *Robin.Bruckner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NOAA Community-based Restoration Program (CRP) provides financial assistance on a competitive basis to implement grass-roots, community-based habitat restoration, debris prevention and removal, and dam and other barrier removal activities through individual projects or restoration partnerships. The NOAA Restoration Center (RC) within the NOAA Fisheries Service Office of Habitat Conservation intends to continue requiring specific information on projects funded under various grants initiatives managed by the RC as part of routine progress reporting. Recipients of NOAA funds under these initiatives will be required to submit information including project location, restoration techniques used, species benefited, acres restored, stream miles opened to access for diadromous fish, volunteer participation, and other parameters. This information collection is necessary to track and report on the large number of community-based projects being implemented with RC support around the country. This information will be used to continue populating a database of NOAA-funded habitat restoration, debris prevention and removal, and barrier removal projects. The database, with its robust querying capabilities, is instrumental to accurate and timely responses to NOAA, Department of Commerce, Congressional, and constituent inquiries. It also ensures accountability for federal funds expended for community-based activities, reported by NOAA through the Government Performance and Reporting Act ''acres restored'' performance measure. The grant recipients are required by the NOAA Grants Management Division to submit periodic performance reports and a final report for each award. This collection will stipulate the information to be provided in these reports until the Performance Progress Report standard forms family (SF–PPR) comes into use government-wide, at which time this information collection will be discontinued.

II. Method of Collection

The reporting form and format outline will be provided to funding recipients and will also be available on the Restoration Center's home page. Electronic submission of forms and progress report narratives will be encouraged but is not required.

III. Data

OMB Number: 0648–0472.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; State, Local and Tribal Governments, business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Response: Interim reports: 9 hours and 45 minutes; final reports: 11 hours and 45 minutes. Three semi-annual reports and one final report over a 24-month period are required for each award; however, information collected and submitted for any single report need not be collected again for subsequent reports.

Estimated Total Annual Burden Hours: 8,240.

Estimated Total Annual Cost to Public: $2,940.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: January 22, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1743 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Continued Information Collection; Comment Request; Questionnaire To Support Review of Federal Assistance Applications

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 30, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be

directed to Cristi Reid, (301) 713–1622 x206 or *Cristi.Reid@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 through 4327) and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies only to the actions of Federal agencies. While those Federal actions may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements, NEPA requires agencies to assess the environmental impacts of actions proposed to be taken by these recipients only when the Federal agency has sufficient discretion or control over the recipient's activities to deem those actions as Federal actions. To determine whether the activities of the recipient of a Federal financial assistance award (*i.e.*, grant or cooperative agreement) involve sufficient Federal discretion or control, and to undertake the appropriate environmental analysis when NEPA is required, NOAA must assess information which can only be provided by the Federal financial assistance applicant. Thus, NOAA has developed an environmental information questionnaire to provide grantees and Federal grant managers with a simple tool to ensure that project and environmental information is obtained. The questionnaire applies only to those programs where actions are considered major Federal actions or to those where NOAA must determine if the action is a major Federal action. The questionnaire includes a list of questions that encompasses a broad range of subject areas. The applicants are not required to answer every question in the questionnaire. Each program draws from the comprehensive list of questions to create a relevant subset of questions for applicants to answer. The information provided in answers to the questionnaire is used by NOAA staff to determine compliance requirements for NEPA and conduct subsequent NEPA analysis as needed. The information provided in the questionnaire may also be used for other regulatory review requirements associated with the proposed project, such as permitting.

II. Method of Collection

Methods of submittal include paper forms via the mail, Internet, and facsimile transmission.

III. Data

OMB Control Number: 0648–0538.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for profit organizations; individuals or households; not-for-profit institutions; state, local, or tribal government; and Federal government.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost to Public: $1,000 in miscellaneous costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: January 22, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–1746 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM69

Fisheries in the Western Pacific; American Samoa Pelagic Longline Limited Entry Program

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

ACTION: Notice; availability of permits.

SUMMARY: NMFS is soliciting applications for American Samoa pelagic longline limited entry permits. At least 22 permits of various class sizes will be available for 2009. Longline fishermen with the earliest documented participation on a Class A vessel (less than or equal to 40 feet (12.2 m) in length) have the highest priority to qualify for a permit. Fishermen with the earliest documented participation in larger size class vessels (in order of size) receive the next priority to qualify for permits. This notice is intended to announce the availability of permits and to solicit applications for the permits.

DATES: Completed permit applications must be received by NMFS by May 28, 2009.

ADDRESSES: Request blank application forms from NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733, or the PIR website *www.fpir.noaa.gov*.

Mail completed applications and payment to NMFS PIR, ATTN: ASLE Permits, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, Sustainable Fisheries, NMFS PIR, tel 808–944–2275, fax 808–973–2940, or e-mail *PIRO-permits@noaa.gov*.

SUPPLEMENTARY INFORMATION: On May 25, 2005, NMFS published a final rule that established a limited entry program for the pelagic longline fishery based in American Samoa (70 FR 29646). American Samoa longline limited entry permits were established for four vessel size classes, based on length:

a. Class A – less than or equal to 40 ft (12.2 m);

b. Class B (and B–1) – over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive;

c. Class C (and C–1) – over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and

d. Class D (and D–1) – over 70 ft (21.3 m).

A total of 60 initial American Samoa longline limited entry permits were issued: 22 in Class A, five in Class B, 12 in Class C, and 21 in Class D. These numbers represent the maximum number of vessels allowed in each size class, pursuant to the regulations implementing the limited entry program at title 50 of the Code of Federal Regulations, part 665.36 (i.e., 50 CFR 665.36). The limited entry program allows for new permits to be issued if the numbers of permits in each size class fall below the maximum. To date, not all permit holders have renewed their permits, invalidating those permits, and making 22 permits available for issuance (note that the number of available permits may change before the application period closes). Of the 22 available permits, thirteen are for

vessel size Class A, four for Class B, four for Class C, and one for Class D.

Persons with the earliest documented participation in the fishery on a Class A sized vessel will receive the highest priority for obtaining permits in any size class, followed by persons with the earliest documented participation in Classes B, C, and D, in that order. If there is a tie in priority, the person with the second earliest documented participation will be ranked higher in priority.

Complete applications must include the completed and signed application form, legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable permit application processing fee, in accordance with the regulations at 50 CFR 665.13. Applications must be received by NMFS (see **ADDRESSES**) by May 28, 2009 to be considered for a permit; applications will not be accepted if received after that date.

Authoritative additional information on the American Samoa limited entry program may be found in 50 CFR part 665.

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

Dated: January 22, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–1727 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM50

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper–Grouper Fishery off the Southern Atlantic States; Comprehensive Annual Catch Limit Amendment

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

ACTION: Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); notice of scoping meetings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) intends to prepare a DEIS to assess the impacts on the natural and human environment of the management measures proposed in its draft Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) for the South Atlantic Region.

DATES: Written comments on the scope of the issues to be addressed in the DEIS will be accepted until February 27, 2009, at 5 p.m.

ADDRESSES: Comments may be sent by any of the following methods, mail: Kate Michie, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 727–824–5305; fax: 727–824–5308; e–mail: *0648–XM50@noaa.gov*. Scoping documents are available from the Council's Web site at *www.safmc.net*.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fisheries Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: 843–571–4366, toll free 1–866–SAFMC–10; fax: 843–769–4520; e–mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Revisions to the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) in 2007 require that by 2010, fishery management plans (FMPs), for fisheries determined by the Secretary of Commerce to be subject to overfishing, must establish a mechanism for specifying annual catch limits (ACLs) at a level that prevents overfishing and does not exceed the recommendations of the Council's Scientific and Statistical Committee or other established peer review processes. These FMPs are also required to establish, by 2010, accountability measures for fisheries subject to overfishing. ACLs and accountability measures for species undergoing overfishing in the FMP for the Snapper–Grouper Fishery of the South Atlantic Region are being addressed in Amendment 17 to that FMP.

The Magnuson–Stevens Act also requires the Council to establish, by 2011, ACLs and accountability measures for all other fisheries, except fisheries for species with annual life cycles. ACL specifications intended to fulfill this 2011 requirement would be included in the subject Comprehensive ACL Amendment.

In addition to ACLs and accountability measures, the Magnuson–Stevens Act requires that the Council's Scientific and Statistical Committee specify overfishing levels and acceptable biological catch (ABC) levels for all species undergoing overfishing. The Comprehensive ACL Amendment may specify an ABC control rule that would describe how the ABC is to be calculated.

The Council is also considering an action to remove some species from South Atlantic fishery management units (FMU)for respective FMPs, particularly those species that have a low occurrence in federal waters. The purpose of this action would be to ensure that fishery managers focus their attention and resources on species that are in need of conservation and management. Additionally, the Council is considering designating some species as Ecosystem Component species that are not part of a fishery but are in an FMP. Species may be included as Ecosystem Components in FMPs for data collection purposes; for ecosystem considerations related to optimum yield; and as considerations in the development of conservation and management measures for the associated fishery.

The amendment may also limit total mortality of federally managed species in the South Atlantic to the annual catch targets (ACTs). To achieve this goal, the amendment may include measures such as commercial quotas, trip limits, vessel limits, size limits, bag limits, closed areas, closed seasons, and permit endorsements. Additionally, the Comprehensive ACL Amendment may address several issues concerning the spiny lobster fishery such as, trap impacts on staghorn and elkhorn corals, tailing permits, and the Federal 50–short rule that allows retention of undersized spiny lobster to be used as live attractants.

This NOI is intended to inform the public of the preparation of a DEIS in support of the Comprehensive ACL Amendment. The DEIS may include: ACLs; ACTs; ecosystem component species; removing some species from South Atlantic FMUs; ABC control rule; and accountability measures; allocations among the commercial, recreational, and for–hire sectors for species not undergoing overfishing; limit total mortality for federally managed species to the ACTs; and address spiny lobster fishery issues. Following publication of this NOI, the Council will conduct public scoping meetings to determine the range of issues to be addressed in the DEIS and the associated Comprehensive ACL Amendment.

Following consideration of public scoping comments, the Council plans to begin preparation of the draft Comprehensive ACL Amendment/DEIS. The Council and its Scientific and Statistical Committee will review the draft Comprehensive ACL Amendment/DEIS in 2009. If the Council approves the document, public review may take place in late 2009. A comment period on the DEIS is planned, which will

include public hearings to receive comments. A **Federal Register** notice will announce the availability of the DEIS associated with this amendment, as well as a 45-day public comment period, pursuant to regulations issued by the Council on Environmental Quality for implementing the National Environmental Policy Act and to NOAA's Administrative Order 216–6. The Council will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

Scoping Meetings, Times, and Locations

All meetings will begin at 3 p.m. In addition to the Comprehensive ACL Amendment, the Council intends to scope additional amendments at this series of meetings, for which separate notices have been prepared. The meetings will be physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council (see **FOR FURTHER INFORMATION CONTACT**).

Monday, January 26, 2009—Hilton Garden Inn, 5265 International Blvd., North Charleston, SC 29418; phone: 843–308–9330.

Tuesday, January 27, 2009—Bridge Pointe Hotel, 101 Howell Rd., New Bern, NC 28582; phone: 252–636–3637.

Tuesday, February 3, 2009—Key Largo Grande, 97000 Overseas Hwy., Key Largo, FL 33037; phone: 305–852–5553.

Wednesday, February 4, 2009—Doubletree Hotel, 2080 N. Atlantic Ave., Cocoa Beach, FL 32931; phone: 321–783–9222.

Thursday, February 5, 2009—Mighty Eighth Air Force Museum, 175 Bourne Ave., Pooler, GA 31322; phone: 912–748–8888.

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

Dated: January 22, 2009.

Alan D. Risenhoover

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

[FR Doc. E9–1728 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM54

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper–Grouper Fishery off the Southern Atlantic States; Amendment 18

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

ACTION: Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); notice of scoping meetings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) intends to prepare a DEIS to assess the impacts on the natural and human environment of the management measures proposed in its draft Amendment 18 to the Fishery Management Plan for the Snapper–Grouper Fishery of the South Atlantic Region (FMP).

DATES: Written comments on the scope of the issues to be addressed in the DEIS will be accepted until February 27, 2009, at 5 p.m.

ADDRESSES: Comments may be sent by any of the following methods:

- E–mail: *0648–XM54@noaa.gov*.
- Fax: 727–824–5308; Attn: Nikhil Mehta.
- Mail: Nikhil Mehta, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Scoping documents are available from the Council's Web site at *www.safmc.net*.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fisheries Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: 843–571–4366, toll free 1–866–SAFMC–10; fax: 843–769–4520; e–mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The snapper–grouper fishery of the South Atlantic region in the exclusive economic zone is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson Stevens Act) by regulations at 50 CFR part 622. Of the 98 species managed by the Council, 73 of these are included in the snapper–grouper management complex.

A NOI for Amendment 18 was published on January 22, 2008 (73 FR 3701), and contained notice of consideration of developing a limited access privilege (LAP) program for the commercial snapper–grouper fishery in the South Atlantic. However, the Council has postponed consideration of a LAP program for the entire snapper–grouper fishery. A second NOI for Amendment 18 was published on April 7, 2008 (73 FR 18782) to announce the development of an amendment to establish a rebuilding plan for the red snapper stock and various management measures to end its overfishing. The Council subsequently moved these items to Amendment 17.

This NOI is intended to inform the public of the preparation of a DEIS in support of the new Amendment 18 to the FMP. During its December 2008 meeting, the Council decided to transfer the following items from Amendment 17 to Amendment 18:

Actions to extend the management range of snapper–grouper north of the Council's current jurisdiction; designate essential fish habitat for snapper–grouper species in the extended management range (New England and Mid–Atlantic); change the golden tilefish fishing year; separate snowy grouper quota into regions; and improve data reporting. The Council is considering extending the range of the snapper–grouper fishery management plan for some species northward in order to conserve and manage these species. The current boundaries would not be changed for golden tilefish, black sea bass, and scup since they are considered separate stocks north and south of Cape Hatteras, North Carolina, and are managed by the Mid–Atlantic Council. The Council is considering modifying the start date of the golden tilefish fishing year to ensure that the regulations for golden tilefish do not impact select fishermen disproportionately. The Council is considering regional quotas for snowy grouper to offer a fair opportunity to fishermen in both southern and northern areas. The Council is also considering actions to improve the accuracy, timing, and quantity of fisheries statistics collected by the current data collection programs for fisheries the Council manages.

In addition to actions listed above, the Council may consider in Amendment 18 limits on participation and effort in the golden tilefish and black sea bass fisheries, and state or regional Annual Catch Limits (ACL) and Annual Catch Targets (ACTs) for the recreational harvest of gag. The Council is concerned that increased restrictions imposed through Amendments 13C and 16 will increase the incentive to target:

1. Golden tilefish in the bottom longline and hook–and–line fisheries.

2. Black sea bass in the pot fishery. Currently, there is no limit to the number of pot tags issued to fishermen who target black sea bass or the number of pots that can be fished. Fishermen may be leaving large numbers of pots fishing for multiple days due to vessel or weather problems, and these pots could unnecessarily kill many black sea bass. The Council is further concerned that in the gag recreational fishery, fishermen in some areas could have an advantage and catch part of the allowable catch sooner than those in other areas.

Additionally, in Amendment 18 the Council may consider modifying the individual transferable quota (ITQ) program currently in place for the South Atlantic wreckfish fishery to conform with the Magnuson–Stevens Act requirements on holding excessive shares in a LAP program. Furthermore, the Maguson–Stevens Act requires periodic reviews of LAP programs, and if needed, allows for modifications to meet the goals of the program.

Following publication of this NOI, the Council will conduct public scoping meetings to determine the range of issues to be addressed in the DEIS and the associated Amendment 18. A **Federal Register** notice will announce the availability of the DEIS associated with this amendment, as well as a 45-day public comment period, pursuant to regulations issued by the Council on Environmental Quality for implementing the National Environmental Policy Act and to NOAA's Administrative Order 216–6. The Council will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

Scoping Meetings, Times, and Locations

All meetings will begin at 3 p.m. In addition to Amendment 18, the Council intends to scope additional amendments at this series of meetings. Separate NOIs will be prepared for each amendment. The meetings will be physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council (see **FOR FURTHER INFORMATION CONTACT**).

Monday, January 26, 2009 —Hilton Garden Inn, 5265 International Blvd., North Charleston, SC 29418; phone: 843–308–9330.

Tuesday, January 27, 2009—Bridge Point Hotel, 101 Howell Road, New Bern, NC 28582; phone: 252–636–3637.

Tuesday, February 3, 2009—Key Largo Grande, 97000 Overseas Highway, Key Largo, FL 33037; phone: 305–852–5553.

Wednesday, February 4, 2009—Doubletree Hotel, 2080 N. Atlantic Avenue, Cocoa Beach, FL 32931; phone: 321–783–9222.

Thursday, February 5, 2009—Mighty Eight Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; phone: 912–748–8888.

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

Dated: January 22, 2009.

Alan D. Risenhoover

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

[FR Doc. E9–1730 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM82

Marine Mammals; File No. 14142

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Niladri Basu, Ph.D., Department of Environmental Health Sciences, University of Michigan, 109 South Observatory Road, Ann Arbor, MI 48109–2029, has applied in due form for a permit to import marine mammal parts for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 27, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14142 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14142.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant is requesting a permit to authorize the importation of samples opportunistically obtained from colleagues at the National Environmental Research Institute (NERI) of Denmark (Roskilde, Denmark). The applicant is requesting authorization to import tissues (brain, liver, muscle, kidney, skin) from up to 100 individuals (hunter-killed, stranded) from each of the following species from Greenland, Faroe Islands, and Denmark: ringed seals (*Phoca hispida*), pilot whale (*Globicephala melas*), hooded seal (*Cystopora cristata*), harp seal (*Pagophilus groenlandicus*), narwhal (*Monodon monoceros*), beluga (*Delphinapterus leucas*), harbour porpoise (*Phocoena phocoena*), harbour seal (*Phoca vitulina*), grey seal (*Haliocherus grypus*). No takes of live animals would be authorized under this permit and there would be no non-target species taken incidentally under this

permit. A permit is requested for a five-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 16, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–1729 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM92

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Interspecies Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, February 18, 2009 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; Telephone: (508)339–2200; Fax:(508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978)465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

(1) The Committee will discuss management plan integration - How to possibly combine species managed under current fishery management plans (FMPs) into broader units under fewer FMPs.

(2) They will also discuss a process for changing specifications for multiple species caught in fisheries managed under annual catch limits (ACLs) in different FMPs.

(3) There will also be a discussion of options to address the yellowtail flounder incidental catch by scallop vessels as it affects the scallop access areas in New England.

(4) The Committee will also finalize Council comments on priorities for 2009 observer coverage under the Standardized Bycatch Reporting Methodology.

(5) Other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people withdisabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 23, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–1780 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2008–0063]

Request for Comments and Notice of Roundtable on Deferred Examination for Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) frequently receives suggestions that the USPTO adopt a deferral of examination procedure. The USPTO is conducting a roundtable to obtain public input from diverse sources to determine whether the support expressed for deferral of examination is isolated or whether there is general support in the patent community and/or the public sector generally for the adoption of some type of deferral of examination. The roundtable is open to the public. Members of the public who wish to participate in the roundtable must do so by request, as the number of participants in the roundtable is limited to ensure that all who are speaking will have a meaningful chance to do so. Members of the public who wish solely to observe need not submit a request. Any member of the public may submit written comments on issues raised at the roundtable or on any issue pertaining to deferral of examination.

DATES: The roundtable will be held on Thursday, February 12, 2009, beginning at 9 a.m. and ending at 12:30 p.m.

The deadline for receipt of requests to participate in the roundtable is 5 p.m. on Thursday, February 5, 2009.

The deadline for receipt of written comments is February 26, 2009.

ADDRESSES: The roundtable will be held in at the USPTO, in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, Virginia.

Requests to participate at the roundtable are required and must be submitted by electronic mail message through the Internet to *robert.bahr@uspto.gov.* Requests to participate at the roundtable should indicate the following information: (1) the name of the person desiring to participate and his or her contact information (telephone number and electronic mail address); and (2) the organization(s) he or she represents.

Written comments should be sent by electronic mail message over the Internet addressed to *AC6comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written comments and list of the roundtable participants and their associations will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web

site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Counsel, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: Currently, many intellectual property (IP) offices that substantively examine patent applications do not perform a substantive examination on every patent application that is filed in the respective office. Specifically, a patent application is not given a substantive examination in many IP offices unless and until an applicant submits an express request for examination, and the failure to file any such request for examination within a specified time period results in abandonment or withdrawal of the application. This practice is commonly referred to as ''deferred examination.''

In the United States, the mere filing of a patent application and payment of the applicable fees is effectively a request for examination of the application. The USPTO frequently receives suggestions that the USPTO adopt a deferral of examination procedure. The USPTO has in place an optional deferred examination procedure that was adopted as part of the rule making to implement eighteen-month publication of patent applications. *See Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR 57023, 57033, 57056 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63, 71–72, 92 (Oct. 10, 2000) (final rule). This deferral of examination procedure permits deferral of examination for up to three years from the earliest filing date for which a benefit is claimed under title 35, United States Code. *See* 37 CFR 1.103(d). The deferral of examination procedure set forth in 37 CFR 1.103(d), however, has been used in fewer than two hundred applications since its inception on November 29, 2000 (the effective date of eighteen-month publication and 37 CFR 1.103(d)).

The USPTO is conducting a roundtable to determine whether the support expressed for deferral of examination is isolated or whether there is general support in the patent community and/or the public sector generally for the adoption of some type of deferral of examination. The number of participants in the roundtable is limited to ensure that all who are speaking will have a meaningful chance to do so. The USPTO plans to invite a number of participants from patent user, practitioner, industry, and independent inventor organizations, academia, industry, and government. The USPTO also plans to have a few ''at-large'' participants based upon requests received in response to this notice to ensure that the USPTO is receiving a balanced array of views on deferral of examination.

The roundtable is open to the public, but participation in the roundtable is by request, as the number of participants in the roundtable is limited. While members of the public who wish to participate in the roundtable must do so by request, members of the public who wish solely to observe need not submit a request. Any member of the public, however, may submit written comments on issues raised at the roundtable or on any pertaining to deferral of examination, for consideration by the USPTO. Persons submitting written comments should note that the USPTO does not plan to provide a ''comment and response'' analysis of such comments as this notice is not a notice of proposed rule making.

The USPTO plans to make the roundtable available via Web cast. Web cast information will be available on the USPTO's Internet Web site before the roundtable. The written comments and list of the roundtable participants and their associations will be posted on the USPTO's Internet Web site.

Dated: January 22, 2009.

John J. Doll,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. E9–1740 Filed 1–27–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to receive briefings and information on the 2009 topics. The meeting is open to the public, subject to availability of space.

DATES: February 18–19, 2009, 8:30 a.m.–5 p.m.

ADDRESSES: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Robert Bowling, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. *Robert.bowling@osd.mil.* Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Wednesday, February 18, 2009 8:30 a.m.–5 p.m.

—Rand Report on Assessing the Assignment Policy for Army Women and Delivery of Services to Reserve Component Families.
—National Guard Support for Families of Wounded Warriors.
—Public Forum.

Thursday, February 19, 2009 8:30 a.m.–5 p.m.

—Additional Briefings on Women's Roles during Deployment and Support to Families of the Wounded.
—Review of Topics for 2009, Installation Visits, and Focus Group Discussions.

Interested persons may submit a written statement for consideration by the Defense Department Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact at the address detailed above not later than 5 p.m., Monday, February 16, 2009. If a written statement is not received by Monday, February 16, 2009 prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Department Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Department Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Department Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement must be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will

determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Wednesday, February 18, 2009 from 4:30 p.m. to 5 p.m. before the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: January 21, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–1799 Filed 1–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 30, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 23, 2009.

Angela C. Arrington,

Leader, Information Collections Clearance Division, Regulatory Information Management Services Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 720.

Abstract: The Individuals with Disabilities Education Act, signed on December 3, 2004, became Pub. L. 108–446. In accordance with 20 U.S.C. 1412(a) a State is eligible for assistance under Part B for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the conditions found in 20 U.S.C. 1412. Information Collection 1820–0030 is being extended so that a State can provide assurances that it either has or does not have in effect policies and procedures to meet the eligibility requirements of Part B of the Act as found in Pub. L. 108–446. Information Collection 1820–0030 corresponds with 34 CFR Sections 300.100–176; 300.199; 300.640–645; and 300.705. These sections include the requirement that the Secretary and local educational agencies located in the State be notified of any State-imposed rule, regulation, or policy that is not required by this title and Federal regulations.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3935. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–1848 Filed 1–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 27, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 22, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Annual Vocational Rehabilitation Program/Cost Report (RSA–2).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 385.

Abstract: The RSA–2 collects expenditure and service data from state vocational rehabilitation agencies under title I of the Rehabilitation Act of 1973, as amended in order for the Rehabilitation Services Administration (RSA) to manage, administer, and evaluate vocational rehabilitation programs.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3909. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–1849 Filed 1–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 30, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 23, 2009.

Angela C. Arrington,

Leader, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: State and Local Educational Agency Record and Reporting Requirements Under Part B of the Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 79,194.

Burden Hours: 472,651.

Abstract: OMB Information Collection 1820–0600 reflects the provisions in the Act and the Part B regulations requiring States and/or local educational agencies (LEAs) to collect and maintain information or data and, in some cases, report information or data to other public agencies or to the public. However, such information or data are not reported to the Secretary. Data are collected in the areas of private schools, parentally placed private school students, State high cost fund, notification of free and low cost legal services, early intervening services, notification of hearing officers and mediators, State complaint procedures, and the LEA application under Part B.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3936. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–1850 Filed 1–27–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Wednesday, February 4, 2009, 10 a.m.–12 noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005, (Metro Stop: Metro Center).

AGENDA: The Commission will receive an update on the voting system certification program. Commissioners will install new officers for 2009. The Commission will consider other administrative matters.

This meeting will be open to the public.

FOR MORE INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Rosemary Rodriguez,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. E9–1971 Filed 1–26–09; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13299–000]

Alaska Village Electric Cooperative; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 21, 2009.

On October 9, 2008, and supplemented on January 15, 2009, Alaska Village Electric Cooperative filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Shungnak River Hydroelectric Project located on the Shungnak River in the Northwest Arctic Borough, Alaska.

The proposed Shungnak River Hydroelectric Project would consist of: (1) A proposed 200-foot-high, 400-foot-long earth filled gravity dam; (2) a proposed 2.2 square mile reservoir with a storage capacity of 42,000 acre-feet; (3) a proposed 2,000-foot-long, 10-foot diameter steel or concrete penstock; (4) a proposed powerhouse containing four 1.25-megawatt generators; (5) a proposed 12.7-mile-long, 7,200/12,400-volt transmission line; and (6) appurtenant facilities. The Shungnak River Hydroelectric Project is estimated to have an annual generation of 35.04-gigawatt-hours, which would be sold to the community of Shungnak or mining operations in the vicinity of the project.

Applicant Contact: Mr. Daniel Hertrich, Polarconsult Alaska, Inc., 1503 W 33rd Ave, #310, Anchorage, Alaska 99503, phone: (907) 258–2420.

FERC Contact: Kelly T. Houff (202) 502–6393.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13299) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1761 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–091]

Alcoa Power Generating, Inc.; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 21, 2009.

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

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2197–091.

c. *Date Filed:* January 6, 2009.

d. *Applicant:* Alcoa Power Generating, Inc.

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* The project is located on the Yadkin River in Rowan County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Marshall Olsen, Environmental and Natural Resource Manager, Alcoa Power Generating, Inc. P.O. Box 576, Badin, NC 28007. Phone: (704) 422–5622.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov*. Deadline for filing comments and or motions: February 23, 2009.

j. Deadline for filing motions to intervene and protests, comments, and recommendations are due 21 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

k. *Description of the Application:* The Alcoa Power Generating, Inc., licensee for the Yadkin Hydroelectric Project, has filed an application seeking authorization from the Federal Energy Regulatory Commission to issue a permit to High Rock Development, LLC. to construct boat docking facilities that would include: (1) Three cluster docks that will accommodate a total of 36 watercraft; (2) additional docks that would accommodate 68 watercraft; (3) associated courtesy docking for 7 watercraft at a fuel-dispensing dock; and (4) a boat launching ramp. Some dredging would be necessary. This marina would service the residential community know as ''Sunset Pointe'' on Cane Creek of the High Rock Reservoir.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the

Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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

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

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1763 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6641–087; Project No. 6902–074; Project No. 10228–058]

American Municipal Power—Ohio, Inc.; Notice of Application for Approval of Contract Under Section 22 of the Federal Power Act

January 16, 2009.

Take notice that on January 12, 2009, American Municipal Power—Ohio, Inc. filed with the Commission an application for approval of a contract for the sale of power from its licensed Smithland Project No. 6641 and Cannelton Project No. 10228, and from the City of New Martinsville, West Virginia's licensed Willow Island Project No. 6902, for a period extending beyond the expiration of the existing licenses.[1] The projects are located on the Ohio River in West Virginia, Ohio, and Kentucky.

Section 22 of the Federal Power Act, 16 U.S.C. 815, provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made.

Comments on the request for approval of the power sales contract or motions to intervene may be filed with the Commission no later than February 17, 2009, and replies to comments no later than February 24, 2009. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the comments or documents on that resource agency.

[1] The licenses for the Smithland, Cannelton, and Willow Island Projects expire on May 31, 2038, August 31, 2039, and May 31, 2041, respectively.

All documents (an original and eight copies) must be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the names ''Smithland Project No. 6641, Willow Island Project No. 6902, and Cannelton Project No. 10228'' on the first page of all documents.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''eFiling'' link.

A copy of the filing is available for review in the Commission's Public Reference Room or may be viewed on the Commission's Web site *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these projects or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1768 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Projects Nos. 13240–000 and 13241–000

BPUS Generation Development LLC; Intertie Energy Storage LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions to Intervene, and Competing Applications

January 16, 2009.

On June 13, 2008, at 5:01 p.m., and on June 16, 2008, at 12:05 a.m., respectively, BPUS Generation Development LLC (BPUS Generation) and Intertie Energy Storage LLC (Intertie Energy) filed applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Lorella Pumped Storage Project and the Klamath County Water Power Project, to be located approximately two miles

southwest and ten miles northeast of the towns of Lorella and Malin in Klamath County, Oregon.

The proposed projects would each consist of: (1) A proposed upper reservoir with a surface area of approximately 200 acres at a normal water surface elevation of approximately 5533 feet m.s.l.; (2) a proposed lower reservoir with a surface area of approximately 400 acres at a normal water surface elevation of approximately 4,200 feet m.s.l.: (3) a proposed powerhouse containing 4 generating units having a total installed capacity of 1,000 megawatts, (4) a proposed intake structure, (5) a proposed 4-mile-long, 500 kV transmission line, and (6) appurtenant facilities. The projects would each have an annual generation of approximately 1,600 gigawatt-hours that would be sold to a local utility.

Applicant Contact: for BPUS Generation—Mr. Jeffrey M. Auser, P.E., BPUS Generation Development LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088; phone: 315–413–2700; for Intertie Energy—Mr. George Waldow, Intertie Energy Storage LLC, 1390 Kingsview Lane, Plymouth, MN 55447; phone: 763–476–4440. FERC Contact: Tom Papsidero, 202–502–6002.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about these projects can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13240–000 or P–13241–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1766 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. P–2403–056; P–2721–020; P–2312–019]

Penobscot River Restoration Trust; Notice of Application for Surrender of Licenses Accepted for Filing, Soliciting Comments, Motions to Intervene and Protests, Ready for Environmental Analysis

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

a. *Type of Application:* Surrender of Licenses.

b. *Project Nos.:* P–2403–056, P–2721–020, P–2312–019.

c. *Date filed:* November 7, 2008.

d. *Applicant:* Penobscot River Restoration Trust (Trust). PPL Maine, LLC is the licensee for the Veazie (P–2403) and Howland (P–2721) Projects and PPL Great Works, LLC is the licensee for the Great Works Project (P–2312). Pursuant to the transfer orders issued January 6, 2009, the Trust is to become the licensee once the instruments of conveyance are signed. Pursuant to the Lower Penobscot River Basin Comprehensive Settlement Accord filed on June 25, 2004, the transfer of ownership to the Trust is contingent upon the issuance of the license surrender order.

e. *Name of Projects:* Veazie, Howland and Great Works Hydroelectric Projects.

f. *Location:* The Veazie and Great Works Projects are located on the Penobscot River in Penobscot County, Maine. The Howland Project is located on the Piscataquis River in Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Ms. Laura Rose Day, Penobscot River Restoration Trust, P.O. Box 5695, Augusta, Maine 04332, Telephone (207) 430–0114, e-mail *laura@penobscotriver.org*.

i. *FERC Contact:* Ms. Brandi Sangunett, Telephone (202) 502–8393, and e-mail *brandi.sangunett@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations is 30 days from the issuance of this notice. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Request:* The applicant proposes to surrender the licenses for the Veazie, Great Works and Howland Hydroelectric Projects. In addition, the applicant proposes to decommission and remove the dams at the Veazie and Great Works Projects. Further, the applicant proposes to decommission the powerhouse, generating units, and existing fish ladder at the Howland Project. The applicant proposes to keep the Howland dam in place but remove the flashboards to lower the reservoir by 0.8 feet and create a nature-like fish bypass reach around the south end of the dam. This application is part of a four phase program to restore native sea-run fish through improved access to 1,000 miles of their historic habitat in the Penobscot River watershed while also accommodating the continued generation of hydroelectric power at specified locations.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or

''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

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

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1767 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13329–000]

Town of Wiscasset, ME; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 21, 2009.

On November 12, 2008, the Town of Wiscasset, Maine filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Town of Wiscasset Tidal Resources Project to be located on the Sheepscot River in Lincoln County, Maine. The project uses no dam or impoundment.

The proposed project would consist of: (1) 4 to 40 OCGen(™) hydrokinetic turbine generating units, with a total installed capacity of 1 to 10 megawatts, (2) a proposed underwater transmission cable approximately 6 miles in length, (3) a proposed 1,000-foot-long, 480-volt transmission line, and (4) appurtenant facilities. The project is estimated to have an annual generation of 43.8 gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Arthur Faucher, Town Manager, Town of Wiscasset, 51 Bath Road, Wiscasset, Maine 04578, phone: (207) 882–8200.

FERC Contact: Kelly T. Houff (202) 502–6393.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13329) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1762 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.—ER06–615–000; ER07–1257–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

January 21, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and attend a stakeholder meeting of the California Independent System Operator (CAISO). Unless otherwise noted, the meeting will be held at the CAISO, 151 Blue Ravine Road, Folsom, CA or by teleconference. The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com*.

January 20, 2009—Teleconference on MRTU Parallel Operations

January 22, 2009—MRTU Final Cutover and Reversion Meeting

January 27, 2009—Teleconference on MRTU Parallel Operations

Sponsored by the CAISO, the teleconferences and meeting are open to all market participants, and the Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov*; (916) 294–0233 or Maury Kruth at *maury.kruth@ferc.gov*, (916) 294–0275.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1760 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 233–161]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

January 21, 2009.

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

a. *Type of Application:* Amendment of License.

b. *Project No.:* 233–161.

c. *Date filed:* December 5, 2008.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Pit 3, 4 & 5 Hydroelectric Project.

f. *Location:* The project is located on the Pit River in Shasta County, California. The project occupies federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. David Moller, Director, Hydro Licensing, Pacific Gas and Electric Company, P.O. Box 7770000, N11C–1147, San Francisco, CA 94177–0001, telephone (415) 973–4696, Fax (415) 973–5121, *DXMa@pge.com*.

i. *FERC Contact:* Anumzziatta Purchiaroni, Telephone (202) 502–6191, and e-mail *anumzziatta.purchiaroni@FERC.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Request:* The applicant proposes to amend the license for Pit 3, 4 & 5 Hydroelectric Project to construct a new powerhouse at the Pit 3 Dam, containing a single 2.8 MW turbine/generator unit with a hydraulic capacity of 370 cfs. The proposed Britton Powerhouse will be constructed within the existing project boundary, and would use the power potential of increased minimum instream flows released as required under Article 401 of the license.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210,.211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or '' FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. e-Filing: Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1757 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF09–4011–000]

Southwestern Power Administration; Notice of Filing

January 21, 2009.

Take notice that on January 12, 2009, the Acting Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested on the Deputy Secretary by the Department of Energy's Delegation Order Nos. 00–001.00 (2001) and 00–001.00C (2007), and by sections 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (Pub. L. 95–91), submitted final confirmation, approval,

and placed in effect on an interim basis for period January 1, 2009 through September 20, 2010, the Southwestern Power Administration Integrated System Power Rate Schedules, Rate Schedule P–06A, Wholesale Rates for Hydro Peaking Power and Rate Schedule NFTS–06A, Wholesale Rates for Non-Federal Transmission Service.

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 online 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 February 11, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1758 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF09–5031–000]

Western Area Power Administration; Notice of Filing

January 21, 2009.

Take notice that on January 12, 2009, the Acting Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested by Delegation Order No. 00–037.00, submitted for confirmation and approval on a final basis effective February 1, 2009 and ending December 31, 2013, proposed firm power rate adjustment for the Pick-Sloan Missouri Basin Program, Rate Schedules P–SED–F10 and P–SED–FP–10 under Rate Order No. WAPA–140.

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 online 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 February 11, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1759 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

January 16, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

Docket No.	File date	Presenter or requester
1. CP07–62–000, CP07–63–000	1–13–09	Hon. C.A. Dutch Ruppersberger. Hon. Barbara A. Mikulski. Hon. Ben Cardin. Hon. Elijah E. Cummings. Hon. John P. Sarbanes.
2. P–2197–000	1–14–09	Kara Weishaar (Hon. Richard Burr).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1769 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–49–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

January 21, 2009.

Take notice that on January 15, 2009, Columbia Gas Transmission, LLC (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP09–49–000, a prior notice request pursuant to sections 157.205, 157.208(b) and 157.216(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, and Columbia's blanket certificate issued in Docket No. CP83–76–000 to replace a compressor unit at Renovo Compressor Station in Clinton County, Pennsylvania, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Columbia proposes to construct one 860 horsepower (HP) ISO rated Cat 3512 leased compressor unit and appurtenances to replace an existing 880HP ISO rated Cooper compressor unit and appurtenances located on Columbia's existing Line 1711 in Clinton County, Pennsylvania. The replacement project is necessitated by the age and condition of the existing compressor unit. Columbia estimates the lease cost associated with the replacement of the compressor unit to be approximately $976,000 for the term of the lease.

Any questions regarding the application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 22030–0146 at (304) 357–2359, fax (304) 357–3206.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1764 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–6–000]

LNG Development Company, LLC.; Notice of Technical Conference

January 16, 2009.

On Wednesday, February 4, 2009, at 10 a.m. (PST), staff of the Office of Energy Projects will convene an engineering design and technical conference (cryogenic conference) regarding the proposed Oregon LNG import terminal. The conference will be held at the Holiday Inn Express Hotel & Suites, in Astoria, Oregon. The hotel is located at 204 West Marine Drive, Astoria, OR 97103. For hotel details call (503) 325–6222.

The conference will review the design of the LNG storage tanks and facility, instrumentation and controls, hazard detection and controls, spill containment, geotechnical topics, and other issues related to the operation of the proposed facility. Issues related to environmental impacts and LNG vessel transit are outside the scope of the conference.

In view of the nature of critical energy infrastructure information and security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested federal, state, and local agencies. Any person planning to attend the February 4th cryogenic conference *must register* by close of business on Monday, February 2, 2009. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the

referenced online link) to 202–208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. Upon arrival at the hotel, check the reader board in the hotel lobby for venue. For additional information regarding the cryogenic conference, please contact Ghanshyam Patel at 202–502–6431.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1770 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–282–001]

Old Dominion Electric Cooperative; Notice of Waiver

January 16, 2009.

Take notice that on December 18, 2008, Old Dominion Electric Cooperative filed a request for continued waiver from the requirements of the Commission's Standards of Conduct requirements contained in Part 358 of the Commission's Regulations, 18 CFR Part 358 (2008).

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

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

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Friday January 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–1765 Filed 1–27–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0573, FRL–8768–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; RCRA Hazardous Waste Permit Application and Modification, Part A (Renewal), EPA ICR Number 0262.12, OMB Control Number 2050–0034

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 27, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0573, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Toshia King, Environmental Protection Agency, Mailcode 5303W, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–7033; fax number: 703–308–8617; e-mail address: *king.toshia@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 8, 2008 (73 *FR* 52039), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0573, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: RCRA Hazardous Waste Permit Application and Modification, Part A (Renewal)

ICR numbers: EPA ICR No. 0262.12, OMB Control No. 2050–0034.

ICR Status: This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if

applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSDF) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes managed. Section 3005 of Subtitle C of RCRA requires TSDFs to obtain a permit. To obtain the permit, the TSDF must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes: the design capacity of such processes: and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 25 hours per response for an initial Part A Application and 13 hours per response for a revised Part A application. 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 which have subsequently changed; 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.

Respondents/Affected Entities: Business or other for-profit.

Estimated Number of Respondents: 82.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 497.

Estimated Total Annual Cost: $35,791, which includes $35,619 in annualized labor costs and $172 annualized operating and maintenance costs.

Changes in the Estimates: There is an increase of 95 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due primarily to the State agency burden, which was not calculated in previous renewals.

Dated: January 22, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–1804 Filed 1–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0572, FRL–8768–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR–Media) (Renewal), EPA ICR Number 1775.05, OMB Control Number 2050–0161

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 27, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0572, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mike Fitzpatrick, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8411; fax number 703–308–8617; e-mail address: *fitzpatrick.mike@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 5, 2008 (73 FR 51809), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0572, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Hazardous Remediation Waste Management Requirements (HWIR-Media)(Renewal).

ICR numbers: EPA ICR No. 1775.05, OMB Control No. 2050–0161.

ICR Status: This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9,

are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, requires EPA to establish a national regulatory program to ensure that hazardous wastes are managed in a manner protective of human health and the environment. Under this program (known as the RCRA Subtitle C program), EPA regulates newly generated hazardous wastes, as well as hazardous remediation wastes (i.e., hazardous wastes managed during cleanup). To facilitate prompt and protective treatment, storage, and disposal of hazardous remediation wastes, EPA established three requirements for remediation waste management sites that are different from those for facilities managing newly generated hazardous waste:

- Performance standards for remediation waste management sites (40 CFR 264.1(j));
- A provision excluding remediation waste management sites from requirements for facility-wide corrective action; and
- A new form of RCRA permit for treating, storing, and disposing of hazardous remediation wastes (40 CFR part 270, subpart H). The new permit, a Remedial Action Plan (RAP), streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly.

In addition, EPA created a new kind of unit called a ''staging pile'' (40 CFR 264.554) that allows more flexibility in storing remediation waste during cleanup.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 32 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 which have subsequently changed; 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.

Respondents/Affected Entities: Business or other for-profit.

Estimated Number of Respondents: 215.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 6,953.

Estimated Total Annual Cost: $483,576, which includes $459,103 annualized labor and $24,473 annualized capital or operating & maintenance costs.

Changes in the Estimates: There is an increase of 2,009 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due primarily to the State agency burden, which was not calculated in previous renewals.

Dated: January 21, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–1811 Filed 1–27–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0383; FRL–8399-6]

L-Lactic Acid Registration Review Final Work Plan and Proposed Registration Review Decision; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of December 24, 2008, concerning the availability of EPA's Final Work Plan and Proposed Final Decision for the pesticide case L-Lactic Acid. This document is being issued to correct a typographical error in the name of the active ingredient L-Lactic Acid.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticide and Pollution Precention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-305-6928; e-mail address: bryceland.andrew@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0383. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Does this Correction Do?

FR Doc. E8-30380 published in the **Federal Register** of December 24, 2008 (73 FR 79097) (8391-4) is corrected as follows:

The term ''L-Latic Acid'' is corrected to read ''L-Lactic Acid'' wherever it appears.

List of Subjects

Environmental protection, Registration review, Pesticides and pests, L-Lactic Acid.

Dated: January 15, 2009.

Janet L. Andersen,

Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–1810 Filed 1–27–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8769–2]

Notice of Open Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's EFAB will hold an open meeting of the full board in

Washington, DC on March 16–17, 2009. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of this meeting is to hear from informed speakers on environmental finance issues, proposed legislation, Agency priorities, and to discuss progress with work products under EFAB's current Strategic Action Agenda.

Environmental financing topics expected to be discussed include: Financial Assurance Mechanisms (Commercial Insurance & Cost Estimation); Financial Assurance and CO_2 Underground Injection Control/ Carbon Capture and Sequestration; Water Loss Reduction (''Leaky Pipes''); Innovative Financing Tools, and State Revolving Fund Investment Options.

This meeting is open to the public, however, seating is limited. All members of the public who are planning to attend the meeting must register in advance, no later than Friday, March 6, 2009.

DATES: Full Board Meeting is scheduled for March 16, 2009 from 1:30 p.m.–5:30 p.m. and March 17, 2009 from 8:30 a.m.–5 p.m.

ADDRESSES: The Madison, 1177 15th Street, NW., Washington, DC 20005.

Registration and Information Contact:

To register for this meeting or get further information, please contact Sandra Keys, U.S. EPA, at (202) 564–4999 or *keys.sandra@epa.gov.* For information on access or services for individuals with disabilities, please contact Sandra Keys. To request accommodations for a disability, contact Sandra Keys, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 22, 2009.

Joshua Baylson,

Acting Deputy Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. E9–1809 Filed 1–27–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, January 29, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2008–20: National Right to Life Committee, Inc., by James Bopp, Jr., Esquire.

Draft Advisory Opinion 2008–22: Senator Frank Lautenberg and Lautenberg for Senate, by Marc E. Elias, Esquire.

Report of the Audit Division on the Missouri Democratic State Committee.

Explanation and Justification for Final Rules on Reporting Contributions Bundled by Lobbyists, Registrants, and the PACs of Lobbyists and Registrants.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–1747 Filed 1–27–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Lake Shore Wisconsin Corporation, Sheboygan, Wisconsin; to become a bank holding company by acquiring 100 percent of Hiawatha Bancshares, Inc., Hager City, Wisconsin, and thereby indirectly acquire Hiawatha National Bank, Hager City, Wisconsin.

Board of Governors of the Federal Reserve System, January 23, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–1781 Filed 1–27–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0375] (formerly Docket No. 2004D–0555)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry and Food and Drug Administration Staff; ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 2008 (73 FR 66645), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0633. The approval expires on December 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 16, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–1803 Filed 1–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC).

Dates and Times: February 26, 2009, 8:30 a.m. to 5 p.m. February 27, 2009, 8:30 a.m. to 3 p.m.

Place: Bethesda Marriott-Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Status: The meeting will be open to the public with attendance limited to space availability. Participants are asked to register for the meeting by going to the registration Web site at *http://events.SignUp4.com/ACHDNC0209.* The registration deadline is Wednesday, February 25, 2009. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate their needs on the registration Web site. The deadline for special accommodation requests is Friday, February 20, 2009. If there are technical problems gaining access to the Web site, please contact Tamar R. Shealy, Meetings Manager, Conference and Meetings Management, Altarum Institute, by telephone (202) 828–5100 or via e-mail *conferences@altarum.org.*

Purpose: The ACHDNC was established to advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders. The ACHDNC also provides advice and recommendations concerning the grants and projects authorized under the Newborn Screening Saves Lives Act 2008.

Agenda: The meeting agenda will include presentations and continued discussions on the nomination/evaluation process for newborn screening candidate conditions. The agenda also includes an update on the American Health Information Community's Newborn Screening Use Case and presentations on the National Institutes of Health funded Translational Research Network, and associated research policies and practices, as well as presentations on the continued work and reports of the ACHDNC's subcommittees on laboratory standards and procedures, follow-up and treatment, and education and training.

Proposed agenda items are subject to change as priorities dictate. You can locate the agenda, committee roster and charter, presentations, and meeting materials at the home page of the Web site at *http://events.SignUp4.com/ACHDNC0209.*

Public Comments: Members of the public can present oral comments during the public comment period of the meeting. There will be two public comment periods during this meeting. Comments on Thursday, February 26, 2009, will relate to the Advisory Committee's discussion of adding Severe Combined Immunodeficiency (SCID) to the recommended uniform screening panel. Comments on Friday, February 27, 2009, will relate to all other Committee issues. Those individuals who want to make a comment are requested to register online by Wednesday, February 25, 2009, at *http://events.SignUp4.com/ACHDNC0209.* Requests will contain the name, address, telephone number, and any professional or business affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The list of public comment participants will be posted on the Web site. Written comments should be e-mailed no later than Wednesday, February 25, 2009, for consideration. Comments should be submitted to Tamar R. Shealy, Meetings Manager, Conference and Meetings Management, Altarum Institute, 1200 18th Street, NW., Suite 700, Washington, DC 20036, telephone: 202–828–5100; fax: 202–785–3083, or e-mail: *conferences@altarum.org.*

Contact Person: Anyone interested in obtaining other relevant information should write or contact Alaina M. Harris, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0721, *aharris@hrsa.gov.* More information on the Advisory Committee is available at *http://mchb.hrsa.gov/heritabledisorderscommittee.*

Dated: January 21, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–1737 Filed 1–27–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its 61st meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: February 18, 2009, 1 p.m.–5:15 p.m. February 19, 2009, 9 a.m.–3:15 p.m. February 20, 2009, 8:45 a.m.–10:30 a.m.

Place: The Sofitel Lafayette Square, 806 15th Street, NW., Washington, DC 20005, Phone: 202–730–8800.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Wednesday afternoon, February 18, at 1 p.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable David Beasley and the Vice Chairperson, the

Honorable Larry Otis. Following a formal welcome by a representative of Health and Human Services, the 2009 Report to the Secretary will be voted on for approval. The first presentation will be an introduction of the 2010 topics and a review of the Work Plan by Jennifer Chang, Executive Secretary of the Committee. The first session will be Health Provider Integration. The next session will be HHS Role and Health. The final session of the day will be a panel on Primary Care, Key Provider Groups. The Wednesday meeting will close at 5:15 p.m.

Thursday morning, February 19, at 9 a.m., the Committee will open with a discussion on the 2010 topics. The morning sessions will be Home-Based Options for Rural Seniors and Health Care Provider Integration. The afternoon session will be Partner Perspectives on the chosen topics. Following these sessions, subcommittees will be selected. The formal meeting for Thursday will close at 3:15 p.m. After the close of the formal meeting, Subcommittees will meet to begin developing an outline of the chosen topics.

The final session will be convened Friday morning, February 20, at 8:45 a.m. There will be a review of the subcommittee meetings and action items will be developed for the Committee members and staff. The Committee will draft the letter to the Secretary and discuss the June meeting. The meeting will adjourn at 10:15 a.m.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Jennifer Chang, MPH, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray Gibson, Office of Rural Health Policy (ORHP), Telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Dated: January 21, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–1735 Filed 1–27–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice for Request for Nominations

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill ten upcoming vacancies on the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Authority: 42 U.S.C. 294f, Section 756 of the PHS Act, as amended. The Advisory Committee is governed by provisions of Public Law (Pub. L.) 92–463, as amended (5 U.S.C. Appendix 2) which sets forth standards for the formation and use of advisory committees.

DATES: The Agency must receive nominations on or before March 20, 2009.

ADDRESSES: All nominations are to be submitted by mail to Joan Weiss, PhD, RN, CRNP, Designated Federal Official, ACICBL, Division of Diversity and Interdisciplinary Education, Bureau of Health Professions (BHPr), HRSA, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Norma J. Hatot, CAPT, Senior Program Officer, Division of Diversity and Interdisciplinary Education, Bureau of Health Professions, by e-mail *nhatot@hrsa.gov* or telephone at (301) 443–2681.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACICBL and the Federal Advisory Committee Act Public Law 92–463 as amended, HRSA is requesting nominations for 10 voting members.

The ACICBL provides advice and recommendations to the Secretary and to the Congress concerning policy, program development and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 751–755, Title VII, Part D of the Public Health Service Act. The ACICBL prepares an annual report describing the activities conducted during the fiscal year, identifying findings and developing recommendations to enhance Title VII Interdisciplinary, Community-Based Training Grant Programs. The Annual Report is submitted to the Secretary of the U.S. Department of Health and Human Services, and ranking members of the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Energy and Commerce of the House of Representatives.

The Department of Health and Human Services is requesting a total of ten nominations for voting members of the ACICBL from schools that have administered or are currently administering awards from the following programs: Allied Health; Area Health Education Centers; Chiropractic; Geriatric Academic Career Award; Geriatric Education Centers; Geriatric Training for Physicians, Dentists, and Behavioral and Mental Health Professionals; Graduate Psychology; and Podiatry. Among these nominations, students, residents, and/or fellows from these programs are encouraged to apply. The legislation governing this Committee requires a fair balance between the health professions, a broad geographic distribution and a balance of members from urban and rural areas, and the adequate representation of women and minorities. As such, the pool of appropriately qualified nominees should reflect these requirements to the degree possible.

Interested individuals may nominate multiple qualified professionals for membership to the ACICBL to allow the Secretary a diverse listing of highly qualified potential candidates. Nominees willing to serve as members of the ACICBL should not have an appearance of a conflict of interest that would preclude their participation. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit an evaluation of possible sources of conflicts of interest. In addition, a curriculum vitae and a statement of interest will be required of the nominee to support experience working with Title VII Interdisciplinary, Community-Based Training Grant Programs, expertise in the field, and personal desire in participating on a National Advisory Committee. Qualified candidates will be invited to serve a three year term. All nominations must be received no later than March 20, 2009.

Dated: January 21, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–1739 Filed 1–27–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service Director's Three Initiative Best Practice, Promising Practice, and Local Effort Form

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917–NEW, ''Indian Health Service Director's Three Initiative Best Practice, Promising Practice, and Local Effort Form.'' Type of Information Collection Request: Three year approval of this new information collection, 0917–NEW, ''Indian Health Service Director's Three Initiative Best Practice, Promising Practice, and Local Effort (BPPPLE) Form.''

Form(s): The Indian Health Service BPPPLE form. Need and Use of Information Collection: The Indian Health Service (IHS) goal is to raise the health status of the American Indian and Alaska Native (AI/AN) people to the highest possible level by providing comprehensive health care and preventive health services. To support the HiS mission, the Director's Three Initiative was launched which is comprised of Health Promotion and Disease Prevention (HP/DP), Behavioral Health (BH) and Chronic Care (CC). The Director's Three Initiative is linked together in their aim to reduce health disparities and improve the health and wellness among the AI/AN populations through a coordinated and systematic approach to enhance health promotion, and chronic disease and mental health prevention methods at the local, regional, and national levels.

To provide the product/service to IHS, Tribal, and Urban (I/T/U) programs, the Director's Three Initiative work together to develop a centralized program database of Best/Promising Practices (BPP). The purpose of this collection is to develop a database of BPP to be published on the IHS.gov Web site which will be a resource for program evaluation and for modeling examples of HP/DP, BH, and CC projects occurring in AI/AN communities.

This is a request that OMB approves, under the Paperwork Reduction Act, an IHS information collection initiative to promote submission of ''Best and Promising Practices and Local Efforts'' among the I/T/U.

All information submitted is on a voluntary basis; no legal basis exists for collection of this information.

The information collected will enable the Director's Three Initiative program to: (a) Identify evidence based approaches to prevention programs among the I/T/U when no system is currently in place; and (b) Allow the program managers to review BPPPLE occurring among the I/T/U when considering program planning for their community.

Affected Public: Individuals. Type of Respondents: I/T/U organizations program staff.

The table below provides: Types of data collection instruments, Number of respondents, Responses per respondent, Average burden hour per response, and Total annual burden hour(s).

Estimated Burden Hours

Data collection instrument(s)	Number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
IHS Service Unit, Tribal, and Urban Indian Center Administrators	100	1	20/60	33.3
Total	100			33.3

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call (301) 443–7899; send via facsimile to (301) 443–9879; or send your e-mail requests, comments, and return address to: *betty.gould@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: January 21, 2009.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E9–1794 Filed 1–27–09; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of 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 Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 9–10, 2009.

Closed: February 9, 2009, 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: February 10, 2009, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: February 10, 2009, 10:30 a.m. to 5 p.m.

Agenda: Topics of the meeting include: (1) The implementation of the FIC Strategic Plan; (2) FIG regional priorities; (3) the role of U.S. diplomatic priorities in planning global programs; and (4) priorities for public-private partnerships.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *EISSR@MAIL.NIH.GOV.*

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, drivers license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired lmmunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1753 Filed 1–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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; Bacillus Anthracis Program Project.

Date: February 19, 2009.

Time: 12 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700-B Rockledge Drive, Room 3122, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, 6700-B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–3684, *bgustafson@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: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1856 Filed 1–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Eicosanoids in Renal Function Program Projects.

Date: March 3, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Trafficking in Polarized Epithelial Cells.

Date: April 7, 2009.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–1857 Filed 1–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Science and Technology Directorate: Notice of Public Meeting of the Project 25 Compliance Assessment Program Governing Board

AGENCY: Science and Technology Directorate, Department of Homeland Security.

ACTION: Notice of Public Meeting.

SUMMARY: The Department of Homeland Security's (DHS) Office for Interoperability and Compatibility (OIC) will hold a public meeting of its Project 25 (P25) Compliance Assessment Program (CAP) Governing Board (GB). The P25 CAP GB is composed of public sector officials who represent the collective interests of organizations that procure P25 equipment. The purpose of the meeting is to review and approve the proposed Compliance Assessment Bulletin(s).

The P25 CAP GB will receive public comments during the session, as time permits. DHS OIC will post details of the meeting, including the agenda, ten business days in advance of the meeting at *http://www.safecomprogram.gov*.

DATES: The meeting will take place on Wednesday, February 4, 2009, from 2 p.m. to 3 p.m. (EST).

ADDRESSES: The session will take place via conference call. To participate, please send an e-mail to *Jen_Menaker@sra.com* by February 3, 2009, for access information.

FOR FURTHER INFORMATION, CONTACT: Luke Berndt, Department of Homeland Security, Science and Technology Directorate, Office for Interoperability and Compatibility, Washington Navy Yard, 245 Murray Lane, SW., Building #410, Washington, DC 20528. Telephone: (202) 254–5332. E-mail: *Luke.Berndt@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: Emergency responders—emergency medical technicians, fire personnel, and law enforcement officers—need to seamlessly exchange communications across disciplines and jurisdictions in order to successfully respond to day-to-day incidents and large-scale emergencies. P25 focuses on developing standards that allow radios and other components to interoperate, regardless of the manufacturer. In turn, these standards enable emergency responders to seamlessly exchange critical communications with other disciplines and jurisdictions.

An initial goal of P25 is to specify formal standards for interfaces between the components of a land mobile radio (LMR) system. LMR systems are commonly used by emergency responders in portable handheld and mobile vehicle-mounted devices.

Although formal standards are being developed, no process is currently in place to confirm that LMR equipment advertised as P25-compliant meets all aspects of P25 standards.

To address discrepancies between P25 standards and industry equipment, Congress passed legislation calling for the creation of the P25 CAP. The P25 CAP is a partnership of the DHS Command, Control and Interoperability Division; the Department of Commerce's National Institute of Standards and Technology; industry; and the emergency response community.

The P25 CAP works to establish a process for ensuring that equipment complies with P25 standards and can interoperate across manufacturers. By providing manufacturers with a method to test their equipment for compliance with P25 standards, the P25 CAP helps emergency response officials make informed purchasing decisions. The program's initial focus is on the Common Air Interface, which allows for over-the-air compatibility between mobile and portable radios and tower equipment.

For more information on the program, please review OIC's *Charter for the Project 25 Compliance Assessment Program*, which is available at *http://www.safecomprogram.gov*.

Dated: January 12, 2009.

Luke Berndt,

P25 CAP Program Manager.

[FR Doc. E9–1749 Filed 1–27–09; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0184]

Privacy Act of 1974; United States Immigration and Customs Enforcement—011 Removable Alien Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of records notices, the Department of Homeland Security is giving notice that it proposes to update and reissue the following legacy record system, Justice/INS–012 Deportable Alien Control System (July 31, 2000), as a Department of Homeland Security/Immigration and Customs Enforcement system of records notice titled, DHS/ICE—011 Removable Alien Records System. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect the current status of these records. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this system of records notice elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed. This new system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before February 27, 2009. This new system will be effective February 27, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0184 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202–732–3300), United States Immigration and Customs Enforcement Privacy Officer, United States Immigration and Customs Enforcement. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department

of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) have relied on preexisting Privacy Act systems of records notices (SORN) for the collection and maintenance of records that concern information pertaining to aliens who are removable pursuant to the Immigration and Nationality Act.

As part of its efforts to streamline and consolidate its record systems, DHS is updating and reissuing a legacy Immigration and Naturalization Service system of records under the Privacy Act (5 U.S.C. 552a) that deals with aliens who are removable and have been removed from the United States. This record system will allow DHS/ICE to continue to collect and maintain records regarding individuals removed or deemed removable by DHS/ICE. The collection and maintenance of this information assists DHS/ICE in meeting its obligation to manage the status and/or disposition of removed and removable aliens.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of records notices, DHS is giving notice that it proposes to update and reissue the following legacy record system, Justice/INS–012 Deportable Alien Control System (65 FR 46738 July 31, 2000), as a DHS/ICE system of records notice titled, DHS/ICE—011 Removable Alien Records System. Categories of individuals and categories of records have been reviewed, and the routine uses of this legacy system of records notice have been updated to better reflect the DHS/ICE removable alien records. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this SORN elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed. This new system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE Removable Alien Records System.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS:

DHS/ICE–011.

SYSTEM NAME:

DHS/ICE—011 Removable Alien Records System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Immigration and Customs Enforcement Headquarters in Washington, DC and in field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include aliens removed and alleged to be removable by DHS/ICE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include:

- Alien's name;
- Alien file number;
- Date of birth;
- Country of birth;
- United States addresses;
- Foreign addresses;
- ICE case file number;
- Subject ID and Person ID;
- Fingerprint Identification (FINS) number;
- Bureau of Prisons/U.S. Marshals Service number;
- FBI number;
- Event ID;
- Immigration bond number;
- Charge;
- Amount of bond;
- Hearing date;
- Case assignment;
- Scheduling date;
- Sections of law under which excludability/removability is alleged;
- Data collected to support DHS/ICE's position on excludability/removability, including information on any violations of law and conviction information;
- Date, place, and type of last entry into the United States;
- Attorney/representative's contact information (Last Name; First Name; Middle Name; Suffix; Law Firm; Dates of representation; whether a G–28 has been filed)
- Family data;
- DHS/ICE agents assigned;
- Employer Information: (Employer Name; Employment Start Date and End Date; County; Address; Zip Code; Telephone number; Compensation Type; Salary/Wage;);
- Government decisions concerning an individual's request for immigration benefits and information about other immigration-related actions by the Government (*e.g.*, dismissals, entry of orders of removal, etc.); and
- Other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 8 U.S.C. 1103, 1227, 1228, 1229, 1229a, and 1231.

PURPOSE(S):

The purpose of this system is to assist DHS/ICE in the removal and detention of aliens in accordance with immigration and nationality laws. This system also serves as a docket and control system by providing management with information concerning the status and/or disposition of removable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information

contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, administrative tribunal, opposing counsel, parties, and witnesses, in the course of a civil or criminal proceeding before a court or adjudicative body when

(a) DHS or any component thereof; or

(b) Any employee of DHS in his or her official capacity; or

(c) Any employee of DHS in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where DHS determines that litigation is likely to affect DHS or any of its components, is a party to litigation or has an interest in such litigation, and DHS determines that use of such records is relevant and necessary to the litigation, provided however that in each case, DHS determines that disclosure of the information to the recipient is a use of the information that is compatible with the purpose for which it was collected.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

J. To other Federal, State, local, or foreign government agencies, individuals, and organizations during the course of an investigation, proceeding, or activity within the purview of immigration and nationality laws to elicit information required by DHS/ICE to carry out its functions and statutory mandates.

K. To the appropriate foreign government agency charged with enforcing or implementing laws where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

L. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

M. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

N. To an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

O. To foreign governments for the purpose of coordinating and conducting the removal of aliens from the United States to other nations.

P. To family members and attorneys or other agents acting on behalf of an alien to assist those individuals in determining whether (1) the alien has been arrested by DHS for immigration violations, and (2) the location of the alien if in DHS custody, provided however, that the requesting individuals are able to verify the alien's date of birth or Alien Registration Number (A-Number), or can otherwise present adequate verification of a familial or agency relationship with the alien.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records are retrieved by Name, A-file number, alien's Bureau of Prisons/U.S. Marshal number, case number, subject ID, person ID, FINS number, event ID, state ID, FBI number, and/or bond number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Cases that have been closed for a year are archived and stored in the database for 75 years, then deleted. Copies of forms used within this system of records are placed in the alien's file. Electronic copies of records (copies from electronic mail and word processing systems) which are produced and made part of the file are deleted within 180 days after the recordkeeping copy is produced.

SYSTEM MANAGER AND ADDRESS:

Director, Detention and Removal Operations, Immigration and Customs Enforcement Headquarters, 500 12th Street, SW., Washington, DC 20024.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, CBP will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to United States Immigration and Customs Enforcement, Freedom of Information Act Office, 800 North Capitol Street, NW., Room 585, Washington, DC 20536.

When seeking records about yourself from this system of records or any other ICE system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the ICE may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Alien; alien's attorney/representative; DHS/ICE agent; other Federal, State, local and foreign agencies; and the courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H) , and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: January 16, 2009.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–1750 Filed 1–27–09; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–601, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review: Form I–601, Application for Waiver of Grounds of Inadmissibility; OMB Control No. 1615–0029.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 3, 2008, at 73 FR 51502, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 27, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0029 in the subject box. Written comments and suggestions from the public and affected agencies 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 or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–601. 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. The information collected on this form is used by U.S Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,500 responses at 1½ hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210, (202) 272–8377.

Dated: January 23, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–1798 Filed 1–27–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–02]

Notice of Proposed Information Collection: Comment Request; FHA Lender Approval, Annual Renewal, Periodic Updates and Noncompliance Reporting by FHA Approved Lenders

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: March 30, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Program Contact, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, 451 7th Street, SW., Room B133–P3214, Washington, DC 20410, telephone (202) 708–1515 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting 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 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 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: FHA Lender Approval, Annual Renewal, Periodic Updates and Noncompliance Reports by FHA Approved Lenders.

OMB Control Number, if applicable: 2502–0005.

Description of the need for the information and proposed use: The information is used by FHA to verify that lenders meet all approval, renewal, update and compliance requirements at all times. It is also used to assist FHA in managing its financial risks and protect consumers from lender noncompliance with FHA rules and regulations.

The application form 11701 that was previously covered by this collection was shared with Ginnie Mae for its applicants. It is also approved under 2503–0033. The application form in this collection has been revised to only cover FHA lender approval applicants and has a new form number 92001–A

Agency form numbers, if applicable:

HUD–92001–A Previously HUD–11701, FHA Lender Approval Application Form.

HUD–92001–B FHA Branch Registration Form.

HUD–92001–C Previously HUD–56005, Noncompliances on Title I Loans.

HUD 92001–D Previously HUD–11701–E, Noncompliances on Title II Mortgages.

HUD–92001–E Previously HUD–11701–A, Application Fee for Title I.

HUD–92001–F Previously HUD–11701–B, Application Fee for Title II.

HUD–92001–G Previously HUD–11701–C. Title I Lender Annual Verification Report.

HUD–92001–H Previously HUD–11701–D, Title II Lender Annual Verification Report.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

INFORMATION COLLECTION BURDEN

Item No.	Information collection	Number of respondents	Total annual responses	Hours per response	Total annual hours	Cost per hour	Total annual cost
A	Paper submission of HUD–92001–A Application for FHA Lender Approval, or Conversion, including attachments.	4,000	4,000	2.0	8,000	$47	$376,000
B	Electronic submission of HUD–92001–A Application for FHA Lender Approval or Conversion, including attachments (Currently under development).			.5		47	
C	Paper Submission of HUD–92100–B Application for Registration of New Branch (including attachments).		1,500	0.5	750	47	35,250
D	Electronic Registration of New Branch by Mortgagees via FHA Connection.		3,500	0.1			
E	Paper submission of HUD–92001–C Non-Compliance Report on Title I Loans.		100	1	100	47	4,700
F	Electronic submission of HUD–92100–D Lender Self Reporting on Title II Mortgages pursuant to Lender Quality Control Plans via FHA Connection.		2,400	0.15	360	47	16,920
G	Paper submission of HUD–92001–E and 92001–F Application Fee Cover Sheets for Title I and Title II Lender Approval Applications or Conversion.		4,000	0.05	200	47	9,400
H	Electronic payment of Application Fee for Title I or Title II Lender Approval or Conversion using pay.gov (currently under development).			.05			
I	Paper submission of HUD 92001–E and 92001–F Fee Cover Sheets for Title I and Title II Branch Registration.		1,500	.05	75	47	3,525
J	Electronic payment of fee for Title I or Title II Branch Registration using pay.gov via FHA Connection..		3,500	.05	175	47	8,225
K	Paper submission of HUD–92001–G and 92001–H for Title I and Title II Annual Verification Report by all FHA Approved Lenders.	13,000	13,000	.10	1,300	47	61,100
L	Electronic submission of Annual Verification Report via FHA Connection by all FHA Approved Lenders via FHA Connection (currently under development).			.10			
M	Electronic Submission of Annual Financial Statements using the Lender Assessment SubSystem via FHA Connection by Title I and Title II Nonsupervised Mortgagees and Loan Correspondents.		10,000	3	30,000	47	1,410,000
N	Electronic payment of annual renewal fee of FHA lender approval using pay.gov via of FHA Connection.		12,000	.05	600	47	28,200
O	Electronic Termination of Existing Branch by all lenders via FHA Connection.		4,000	0.05	200	47	9,400
P	Non-Address Business Change Notification (by paper).		600	0.5	300	47	14,100
Q	Address Updates via FHA Connection (electronic).		3,000	0.25	750	47	35,250

INFORMATION COLLECTION BURDEN—Continued

Item No.	Information collection	Number of respondents	Total annual responses	Hours per response	Total annual hours	Cost per hour	Total annual cost
R	Personnel Change Notification of new owners, officers, directors or partners (by paper).		1,000	0.5	500	47	23,500
S	Voluntary Termination by a Lender (by letter).		500	0.25	125	47	5,875
T	Credit Watch Termination Reinstatements (by paper).		14	8	112	47	5,264
	Totals		63,614		43,547	47	2,046,709

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 21, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–1824 Filed 1–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–08]

Continuum of Care Homeless Assistance Grant Application-Continuum of Care Registration

AGENCY: Office of the Chief Information Officer, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Continuum of Care Homeless Assistance Application-Registration is part of the currently approved information collection package 2506–0112. The request for a new information collection is to separate the Continuum of Care Registration from the Continuum of Care Homeless Assistance Application. The registration information is necessary to assist in the selection of proposals submitted to HUD (by State and local governments, public housing authorities, and nonprofit organizations) for the awarded funds under the Supportive Housing, Shelter Plus Care, and Section 8 Moderate Rehabilitation Single Occupancy for Homeless Individuals programs.

DATES: *Comments Due Date:* February 27, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance

Grant Application-Continuum of Care Registration.

OMB Approval Number: 2506–NEW.

Form Numbers: HUD–40090–1.

Description of the Need for the Information And Its Proposed Use:

The Continuum of Care Homeless Assistance Application-Registration is part of the currently approved information collection package 2506–0112. The request for a new information collection is to separate the Continuum of Care Registration from the Continuum of Care Homeless Assistance Application. The registration information is necessary to assist in the selection of proposals submitted to HUD (by State and local governments, public housing authorities, and nonprofit organizations) for the awarded funds under the Supportive Housing, Shelter Plus Care, and Section 8 Moderate Rehabilitation Single Occupancy for Homeless Individuals programs.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	X	Hours per response	=	Burden hours
Reporting burden	500	1		0.5		250

Total Estimated Burden Hours: 250.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 22, 2009.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E9–1823 Filed 1–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-ES-2009-N0012; 92210-1111-0000-B3]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0119; Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden. This ICR is scheduled to expire on January 31, 2009. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before February 27, 2009.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0119.

Title: Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Affected Public: Primarily State, local, or tribal governments. However, individuals, businesses, and not-for-profit organizations could develop agreements/plans or may agree to implement certain conservation efforts identified in a State agreement/plan.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Original Agreement	4	4	2,000 hours	8,000
Monitoring	7	7	600 hours	4,200
Reporting	7	7	120 hours	840
Totals	18	18		13,040

Abstract: Section 4 of the Endangered Species Act (ESA) specifies the process by which we can list species as threatened or endangered. When we consider whether or not to list a species, the ESA requires us to take into account the efforts being made by any State or any political subdivision of a State to protect such species. We also take into account the efforts being made by other entities. States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or similar documents. The conservation efforts recommended or called for in such documents could prevent some species from becoming so imperiled that they meet the definition of a threatened or endangered species under the ESA.

The Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) encourages the development of conservation agreements/plans and provides certainty about the standard that an individual conservation effort must meet for us to consider whether it contributes to forming a basis for making a decision about the listing of a species. PECE applies to ''formalized conservation efforts'' that have not been implemented or have been implemented but have not yet demonstrated if they are effective at the time of a listing decision.

Under PECE, formalized conservation efforts are defined as conservation efforts (specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species) identified in a conservation agreement, conservation plan, management plan, or similar document (68 FR 15100). The development of such agreements/plans is voluntary. There is no requirement that the individual conservation efforts included in such documents be designed to meet the standard in PECE.

Comments: On November 24, 2008, we published in the **Federal Register** (73 FR 71041) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on January 23, 2009. We received one comment in response to this notice. The commenter did not address the information collection requirements, but did object to the continuation of this program. We have not made any changes to our information collection requirements as a result of this comment.

We again 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.

Comments that you submit 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.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–1833 Filed 1–27–09; 8:45 am

BILLING CODE 4310-55-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2009-N0011; 96200-1672-0050-7D]

Proposed Information Collection; Evaluation of Great Ape Conservation Fund Grant Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before March 30, 2009.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Fish and Wildlife Service (we, Service) has contracted with Frederick Sowers Consulting to conduct an independent evaluation of Great Ape Conservation Fund (GACF) grants. The evaluation will be limited to those grants we financed during Fiscal Years 2006 through 2008 through a $2.5 million/year resource transfer from the Agency for International Development in support of the Central Africa Regional Program for the Environment.

In the central African region, conservation efforts are focused around approximately 12 large landscapes where conservation organizations take the lead in a multi-stakeholder process of land use and conservation planning. We plan to survey the direct recipients of GACF grants and their associated partners (e.g. international and African conservation and development nongovernmental organizations, stakeholder groups, civic organizations, and other funding agencies). The survey will cover both leading partners and smaller implementing partners within the landscape.

The 74 grantees, who serve in direct contact with the public, are spread across five countries in the central African region. We plan to use an online survey as an efficient and minimally disruptive means of collecting information on grants management mechanics and operations and grantee performance in achieving conservation aims. The online survey will be open for an adequate period of time to allow respondents ample time to complete and update the survey questionnaire. We plan to collect:

(1) Basic demographic data about the institutions, such as the size of the organization, the length and duration of its presence in the landscape, the nature of its activities, and its relationship with other stakeholders.

(2) Information on the quality and nature of the relationships between grant recipients and the Government.

(3) Effectiveness of the program in contributing to conservation objectives.

II. Data

OMB Control Number: None. This is a new collection.

Title: Evaluation of Great Ape Conservation Fund Grant Activities.

Service Form Number(s): None.

Type of Request: New.

Affected Public: GACF grantees and associated partners (e.g., nongovernment organizations, stakeholder groups, civic organizations, and other funding agencies).

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Annual Number of Responses: 160.

Completion Time per Response: 1.5 hours.

Total Annual Burden Hours: 240 hours.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 12, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–1834 Filed 1–27–09; 8:45 am

BILLING CODE 4310-55-S

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its 19th meeting. The meeting location is the Silver Cloud Inn/University District, 3056 25th Avenue, NE., Seattle, Washington 98105. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will be hearing updates on the USGS Earthquake Hazards Program with a focus on partnered activities in the Pacific Northwest, discuss lessons learned from the Great Southern California Shakeout, and make assignments for annual report preparation.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: February 2, 2009, commencing at 8:30 a.m. and adjourning February 3, 2009, at Noon.

Contact: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714, *applegate@usgs.gov*.

Suzette Kimball,

Associate Director for Geology.

[FR Doc. E9–1782 Filed 1–27–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1420–BJ–TRST] Group No. 194, Minnesota

Eastern States: Filing of Plat of Survey

AGENCY: Bureau Of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 145 North, R. 37 West

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines and the dependent resurvey and survey of the subdivision of section 34 of Township 145 North, Range 37 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted January 16, 2009. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: January 21, 2009.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. E9–1795 Filed 1–27–09; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–506]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2008 Review of Competitive Need Limit Waivers

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request on January 12, 2009 from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–506, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2008 Review of Competitive Need Limit Waivers*.

DATES: *February 4, 2009:* Deadline for filing requests to appear at the public hearing.

February 6, 2009: Deadline for filing pre-hearing briefs and statements.

February 27, 2009: Public hearing.

March 6, 2009: Deadline for filing post-hearing briefs and statements and other written submissions.

April 13, 2009: Transmittal of 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: Information specific to this investigation may be obtained from Eric Land, Project Leader, Office of Industries (202–205–3349 or *eric.land@usitc.gov*) or Gail Burns, Deputy Project Leader, Office of Industries (202–205–2501 or *gail.burns@usitc.gov*). For information on the legal aspects of these investigations, 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: As requested by the USTR, under the authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, and in accordance with sections 503(d)(1)(A) of the Trade Act of 1974 (1974 Act) (19 U.S.C. 2463(d)(1)(A)), the Commission will provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for the following countries and articles provided for in the noted subheadings of the Harmonized Tariff System (HTS): Argentina for HTS subheading 4107.91.80 and 7202.99.20; Brazil for HTS subheading 2922.41.00; India for HTS subheading 7202.41.00; Indonesia for HTS subheading 3907.60.00; and Turkey for HTS subheading 7413.00.10. As requested, the Commission will also provide advice in accordance with section 503(c)(2)(E) of the 1974 Act with respect to whether like or directly competitive products were being produced in the United States on January 1, 1995. In addition, as requested, the Commission will provide advice as to the probable economic effect on total U.S. imports, and on consumers, of the petitioned waivers. As requested by the USTR, the Commission will use the dollar value limit of $135,000,000 for purposes of section 503(c)(2)(A)(i)(I) of the 1974 Act.

As requested by the USTR, the Commission will provide its advice by April 13, 2009. The USTR indicated that those sections of the Commission's report and related working papers that contain the Commission's advice will be classified as ''confidential.''

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on February 27, 2009. Requests to

appear at the public hearing should be filed with the Secretary no later than 5:15 p.m. February 4, 2009. Any pre-hearing briefs and other statements relating to the hearing should be filed with the Secretary not later than 5:15 p.m. February 6, 2009, and all post-hearing briefs and statements and any other written submissions should be filed with the Secretary not later than 5:15 p.m. March 6, 2009. All requests to appear and pre- and post-hearing briefs and statements must be filed in accordance with the requirements in the ''Written Submissions'' section below. In the event that, as of the close of business on February 4, 2009, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Persons interested in learning whether the hearing has been cancelled should call the Office of the Secretary after February 4, 2009, at 202–205–2000.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All such submissions should be addressed to the Secretary and should be received not later than 5:15 p.m. March 6, 2009 (see earlier dates for filing requests to appear and for filing pre-hearing briefs and statements). All written submissions must conform with 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 with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of the investigation in the report it sends to the USTR.

As requested by the USTR, the Commission will publish a public version of the report, which will exclude portions of the report that the USTR has classified as well as any business confidential information.

By order of the Commission.
Issued: January 23, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–1774 Filed 1–27–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement

Notice is hereby given that the U.S. Department of Justice proposes to enter into a settlement agreement with Shell Oil Company and Motiva Enterprises, LLP (collectively, ''the Shell entities'') regarding a portion of the Southeast Federal Center in Washington, DC.

The United States alleges that the Shell entities are liable to the United States for damages and cleanup costs incurred in connection with benzene, toluene, ethylbenzene and xylene contamination found in and around soil and groundwater beneath a portion of the Southeast Federal Center. The United States alleges that the contamination originated from leaking underground storage tanks located at a former filling station adjacent to the contamination. Under the settlement agreement, the Shell entities will pay $2.1 million to the United States and will monitor groundwater in accordance with a plan previously approved by the U.S. Environmental Protection Agency.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Motiva Enteriprises, LLP*, D.J. Ref. 90–7–1–08569.

The Settlement Agreement may be examined at the General Services Administration, National Capital Region, 7th and D Streets, SW., Suite 7048, Washington, DC 20407. Visitors should make an appointment with Kathleen Ryan by calling (202) 708–5155. During the public comment period, the settlement agreement, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. E9–1776 Filed 1–27–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Student and Supervisor Training Validation Surveys.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 30, 2009. This

process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James Scott, Learning Systems Management Division, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New.

(2) *Title of the form/collection:* Student and Supervisor Training Validation Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Other: None. The information will help ATF determine whether the training programs are meeting objectives and impacting the performance of the individuals in their work place. Also, the information will provide performance measure data to OMB and meet Federal law enforcement training accreditation requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,800 respondents will complete a 18-minute survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 360 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 23, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E9–1815 Filed 1–27–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0005]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection: Age, Sex, and Race of Persons Arrested 18 Years of Age and Over; Age, Sex, and Race of Persons Arrested Under 18 Years of Age.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on November 18, 2008, Volume 73, Number 223, Pages 68448–68449, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 27, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(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, 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of current collection.

(2) *The title of the form/collection:* Age, Sex, and Race of Persons Arrested 18 Years of Age and Over; Age, Sex, and Race of Persons Arrested Under 18 Years of Age.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–708 and 1–708a; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, state, federal, and tribal law enforcement agencies. These forms gather data obtained from law enforcement in which an arrest has occurred.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,738 law enforcement agency respondents at 12 minutes for 1–708a and 15 minutes for 1–708.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately

95,785 hours annual burden associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 23, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–1814 Filed 1–27–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–0218]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; Census of Juveniles in Residential Placement (Extension, without change, of a currently approved collection).

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on November 18, 2008, Volume 73, Number 223, Page 68449.

Comments are encouraged and will be accepted for ''thirty days'' until February 27, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, (202) 353–9258, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Census of Juveniles in Residential Placement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal.

Other: Not-for-profit institutions; Business or other for-profit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 3-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 11,550 hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530 (phone: 202–514–4304).

Dated: January 23, 2009.

Lynn Bryant,

Department Deputy Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–1816 Filed 1–27–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Settlement Agreements Between a Plan and Party in Interest

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Department of Labor (the Department) conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

By this notice, the Department is soliciting comments concerning the information collection provisions of two similar prohibited transaction class exemptions, PTE 94–71 and PTE 03–39. Both of these class exemptions concern transactions undertaken pursuant to settlement agreements between an employee benefit plan and a party in interest to that plan. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before March 30, 2009.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

Comments may also be submitted electronically to *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 94–71, entitled Class Exemption to Permit Certain Transactions Authorized Pursuant to Settlement Agreements Between the U.S. Department of Labor and Plans, which was published in final form on October 7, 1994 (59 FR 60837), exempts from the prohibitions of sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA) transactions that are specifically authorized by a settlement agreement resulting from an investigation of an employee benefit plan by the Department pursuant to the authority of section 504(a) of ERISA. The availability of the exemption is conditioned on providing certain notices and disclosures. Specifically, the person seeking to rely on the exemption must provide notice to the affected participants and beneficiaries, at least 30 days prior to entering into the settlement agreement with the Department, in a manner approved by the Department that is reasonably calculated to result in actual receipt. The notice must include an objective description of the transaction, the approximate date on which it will occur, the address of the office of the Department that negotiated the settlement, and a statement apprising participants and beneficiaries of their right to provide comments to that office.

Prohibited Transaction Class Exemption 03–39, entitled Class Exemption For Release of Claims and Extensions of Credit in Connection With Litigation, which was published in final form on December 31, 2003 (68 FR 75632), exempts from the prohibitions of sections 406 and 407(a) of ERISA certain transactions engaged in by a plan in connection with the settlement of litigation. Exempted transactions must involve either release by the plan or by a plan fiduciary of a legal or equitable claim against a party in interest in exchange for consideration given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's or the fiduciary's claim, or an extension of credit by the plan or by a plan fiduciary to a party in interest in connection with a settlement whereby the party in interest agrees to repay, over time, an amount owed to the plan in settlement of a legal or equitable claim by the plan or a plan fiduciary against the party in interest. Among other conditions, the exemption requires that the terms of the settlement be specifically described in a written agreement or consent degree and that the fiduciary entering into the settlement on behalf of the plan acknowledge in writing its fiduciary status. The exemption also requires the plan to maintain, for a period of six years, the records necessary to enable specified interested person to determine whether the exemption's conditions were met.

Because of the similarity of these two exemptions, the Department submitted a combined ICR for the information collections in both exemptions to the Office of Management and Budget (OMB) for review and clearance at the time that PTE 03–39 was published as a proposal in the **Federal Register** (February 11, 2003, 68 FR 6953). The ICR for the information collections in both class exemptions was approved under OMB control number 1210–0091. The approval for the ICRs included in the two exemptions will expire on May 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submission of responses.

III. Current Action

The Department is requesting an extension of the currently approved ICR for Settlement Agreements Between a Plan and Party in Interest. The Department is not proposing or implementing changes to the two exemptions or to the existing ICR. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Settlement Agreements Between a Plan and Party in Interest.

OMB Number: 1210–0091.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 4.

Frequency of Response: One-time.

Responses: 1,080.

Estimated Total Burden Hours: 28.

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

Dated: January 22, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–1784 Filed 1–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Department of Labor (the Department) conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

By this notice, the Department is soliciting comments concerning the information collection provisions of the regulation under section 101(i) of the Sarbanes-Oxley Act of 2002 (the SOA), which requires written notice to be provided to affected participants and beneficiaries of individual account plans of any ''blackout period'' during which their right to direct or diversify investments, obtain a loan, or obtain a distribution under the plan may be temporarily suspended. A copy of the

ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before March 30, 2009.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1) of the SOA amended section 101 of ERISA to add a new subsection (i), requiring that administrators of individual account plans provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. For purposes of this notice requirement, a blackout period generally includes any period during which the ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan or to obtain distributions from the plan will be temporarily suspended, limited or restricted. As required by section 306(b)(2) of SOA, the Department of Labor (Department) issued rules necessary to implement the SOA amendments. The Department's regulation at 29 CFR 2520.101–3 specifies when, how, and to whom a blackout notice must be provided and provides model notices to meet the requirements of the regulation.

The Department submitted the information collection provisions of § 2520.101–3 in an ICR to the Office of Management and Budget (OMB) for review and clearance at the time of publication of the interim final rule, which was published in the **Federal Register** on October 21, 2002 (67 FR 64766). OMB approved the ICR under OMB control number 1210–0122. This approval is scheduled to expire on May 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

The Department is requesting an extension of the currently approved ICR for the Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries. The Department is not proposing or implementing changes to the regulation or to the existing ICR. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Final Rule Relating to Blackout Notices to Participants and Beneficiaries.

OMB Number: 1210–0122.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 85,150.

Frequency of Response: On occasion.

Responses: 5,400,000.

Estimated Total Burden Hours: 187,686.

Total Annual Cost (Operating and Maintenance): $1,407,000.

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

Dated: January 22, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–1785 Filed 1–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Voluntary Fiduciary Compliance Program

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the information collection request (ICR) incorporated in the Voluntary Fiduciary Correction Program (the VFC Program) and the Prohibited Transaction Class Exemption (the Exemption) that is used in connection with the VFC Program. The ICR is currently approved under OMB Number 1210–0118 and is scheduled to expire on May 31, 2009. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before March 30, 2009.

ADDRESSES: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The VFC Program is an enforcement program intended to encourage the full correction of certain breaches of fiduciary responsibility and the restoration of losses resulting from those breaches to participants and beneficiaries in employee benefit plans. For certain eligible breaches that have

been corrected according to the terms and conditions of the VFC Program, the Department will issue a ''no action'' letter, thereby releasing the applicant from possible civil penalties under section 502(l) of ERISA. The VFC Program provides applicants with information both on identifying eligible transactions for correction and on the means for achieving fully acceptable corrections. The information collection consists of an application, description of the transaction and correction, and other appropriate supporting documentation.

The Exemption, used only in conjunction with the VFC Program, permits applicants to the VFC Program to make full correction of certain eligible transactions without incurring sanctions in the form of excise taxes imposed under sections 4975(a) and (b) of the Internal Revenue Code (the Code) by reason of sections 4975(c)(1)(A) through (E) of the Code. For those fiduciaries wishing to take advantage of the Exemption, the information collection for the VFC Program also includes notification to interested persons, generally participants and beneficiaries, that an application has been submitted under the VFC Program. A copy of the notice must also be furnished to a Regional Office of the Employee Benefits Security Administration.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in the VFC Program and the Exemption. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program and Prohibited Transaction Class Exemption.

OMB Number: 1210–0118.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 1,250.

Frequency of Response: Annually.

Responses: 11,790.

Estimated Total Burden Hours: 5,625.

Total Burden Cost (Operating and Maintenance): $109,000.

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

Dated: January 22, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–1786 Filed 1–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request ERISA Advisory Opinion Procedure 76–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning an extension of the information collection provisions incorporated in ERISA Advisory Opinion Procedure 76–1. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section of this notice on or before March 30, 2009.

ADDRESSES: Interested parties are invited to submit written comments regarding the information collection request and burden estimates to: G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers). Comments may also be submitted electronically to *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Employee Retirement Income Security Act of 1974 as amended, (ERISA), the Secretary of Labor is responsible for administration and enforcement of reporting, disclosure, fiduciary, and other standards established for pension and welfare benefit plans. These responsibilities have been delegated within the Department to EBSA. ERISA Advisory Opinion Procedure 76–1 describes the administrative procedures through which the public may request a written interpretation of ERISA from EBSA to resolve issues arising out of specific actual transactions or circumstances. The procedure is designed to promote efficient handling of such inquiries and to facilitate prompt responses. The Procedure requires requesters seeking advisory opinions or information letters to submit certain information that EBSA has determined is essential for determining the nature of a request for interpretation and EBSA's response. EBSA has previously submitted the information collection provisions of Advisory Opinion Procedure 76–1 to the Office of Management and Budget (OMB) for review in an ICR and received approval from OMB under OMB Control No. 1210–0066. The current ICR approval is scheduled to expire on May 31, 2009.

II. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

• 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;

• Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

III. Current Action

This notice requests comments on an extension of the information collection provisions included in ERISA Advisory Opinion Procedure 76–1. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Advisory Opinion Procedure 76–1.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0066.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 83.

Responses: 83.

Estimated Total Burden Hours: 855.

Estimated Total Burden Cost (Operating and Maintenance): $51,000.

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

Dated: January 22, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–1787 Filed 1–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Regulation Regarding Participant Directed Individual Account Plans Under ERISA 404(c)

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the data the Department gathers can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of collection requirements on respondents.

Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning an extension of the information collections in regulation section 2550.404c–1, pertaining to participant-directed individual account plans under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before March 30, 2009.

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 404(c) of ERISA provides that, if an individual account pension plan permits a participant or beneficiary to exercise control over assets in his or her account and the participant or beneficiary in fact exercises such control, the participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control and no person otherwise a fiduciary shall be liable for any loss or breach that results from the participant's or beneficiary's exercise of control.

The Department's regulation at 29 CFR 2550.404c–1 describes the circumstances in which a participant or beneficiary will be considered to have exercised independent control over the assets in his or her individual account as contemplated in section 404(c). The regulation specifies information that must be made available to participants or beneficiaries in order for them to exercise independent control over the assets in their individual accounts. The regulation provides that the relief from fiduciary liability specified in section 404(c) is not available with respect to a transaction undertaken by a participant or beneficiary unless the specific information is provided to the participant or beneficiary. EBSA submitted the information collection provisions in the regulation to the Office of Management and Budget (OMB) for review in an information collection request (ICR) in connection with promulgation of the final rulemaking, and OMB approved the ICR under OMB Control No. 1210–0090. The ICR approval is scheduled to expire on March 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

This notice requests comments on an extension of the information collections

included in regulation section 2550.404c–1, which sets requirements for fiduciary relief pertaining to participant-directed individual account plans under section 404(c) of ERISA. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Regulation Regarding Participant Directed Individual Account Plans (ERISA section 404(c) Plans).

OMB Number: 1210–0090.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 245,000.

Frequency of Response: On occasion.

Responses: 30,164,000.

Estimated Total Burden Hours: 860,000.

Total Burden Cost (Operating and Maintenance): $33,020,000.

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

Dated: January 22, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–1788 Filed 1–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB Program for Alaska.

The following change has occurred since the publication of the last notice regarding the State's EB status:

- As of January 10, 2009, Alaska has completed a mandatory 13-week ''off'' trigger period. Based on data reported by the Bureau of Labor Statistics on December 19, 2008, Alaska's 3-month seasonally adjusted total unemployment rate was 7.1 percent and equals or exceeds 110 percent of the corresponding rate in both prior years. This causes Alaska to be triggered ''on'' to an EB period beginning January 25, 2009.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by e-mail: *gibbons.scott@dol.gov*.

Signed in Washington, DC, this 22nd day of January 2009.

Douglas F. Small,

Deputy Assistant Secretary of Labor for Employment and Training.

[FR Doc. E9–1756 Filed 1–27–09; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used for quoted reproduction orders for various types of records found in their holdings. These include, but are not limited to, WW1 Draft Registration Cards, Prison Records, and Naturalization Records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 30, 2009 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on all respondents; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Online Reproduction Orders for National Archives Records.

OMB number: 3095–0064.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 136,572.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 22,762 hours.

Abstract: NARA's Internet-based ordering system (Order Online!), has made accessible online certain reproduction order forms (replicas of the NATF Series 80 Forms and the NATF 36). Also available are custom

orders for the remaining types of reproduction services, to allow researchers to submit reproduction orders and remit payment electronically.

The information that NARA collects for quoted reproduction orders includes the descriptive information (information necessary to search for the records), payment information (*e.g.*, credit card type, credit card number, and expiration date), customer name, shipping and billing address, and phone number. NARA offers customers the option of submitting their e-mail address as a means of facilitating communication such as order confirmation, status updates, and issue handling.

Dated: January 23, 2009.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E9–1818 Filed 1–27–09; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Central Liquidity Facility

AGENCY: National Credit Union Administration (NCUA).

ACTION: Public notice.

SUMMARY: The NCUA Board has determined to change the methodology by which NCUA's Central Liquidity Facility (CLF) provides funding to credit unions needing loans. The CLF makes loans available to credit unions through the corporate credit union network, which is also involved in the servicing of the loans. The changes require modification to an existing agreement between the CLF and U.S. Central Federal Credit Union (USC) and a new assignment agreement between USC and the CLF. These changes will affect loans already funded and the way future advances by the CLF are administered. In accordance with the current NCUA rule pertaining to the CLF, NCUA is publishing notice of the changes in the **Federal Register**.

DATES: *Effective Date:* This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Taylor, Senior Capital Markets Specialist, at the above address or telephone (703) 518–6620 or Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background. The CLF is a mixed-ownership government corporation within the NCUA. It is managed by the NCUA Board and is owned by its member credit unions. The CLF's purpose is to improve the general stability of credit unions by meeting their liquidity needs. The CLF has in place form documents that reflect the repayment, security, and credit reporting terms applicable to all CLF loans. The CLF makes loan disbursements through the corporate credit union network and relies on members of the corporate network to service loans it has made.

USC is a second tier corporate credit union providing wholesale services to other corporate credit unions and plays a unique role in connection with credit provided by the CLF. The CLF relies on USC to serve as representative for all corporate credit unions and uses USC as the conduit by which funding for loans to natural person credit unions is provided. Loan proceeds pass through USC and go to the corporate credit union in which the end recipient of the funds is a member, to which the funds are ultimately disbursed. Loan documents, including the promissory note and collateral documents, are signed at each level, such that the natural person credit union borrower is indebted to its corporate, which is in turn indebted to USC, which in turn is obligated to repay the advance to the CLF. Corporate credit unions and USC book the obligations to them as assets. There are corresponding liabilities at each level as well, reflecting the obligation to repay the CLF.

B. Changes. At present, loan documents evidencing the indebtedness of natural person credit unions to the CLF are held by their respective corporate credit unions and booked as assets. Credit unions measure net worth as a function of retained earnings divided by assets, so any unusual increase on the asset side of the balance sheet can have a negative impact on net worth, at least until the assets can provide a meaningful contribution to earnings. Accordingly, the NCUA Board has elected to collapse the lending relationship so that the indebtedness of the natural person credit union to the CLF runs directly to it, rather than through the retail and wholesale corporate credit union levels. Because a substantial increase in lending from the CLF may be anticipated in the near term, the Board believes it prudent to modify the lending methodology and loan documentation with respect to future advances.

Restructuring the lending relationship is consistent with the Congressional intent that corporate credit unions serve as agent members for the CLF. 12 U.S.C. 1795c(b). All resulting changes in corporate credit union accounting for their role in these transactions will be accomplished in accordance with Generally Accepted Accounting Principles.

Accordingly, the Board intends to change this process, both with respect to loans already funded and for loans to be made in the future. Although CLF still intends to fund loans through the corporate system, and still intends that the appropriate corporate will service the loans made to its natural person credit union members, going forward CLF will hold all loan interests itself and will not look to either USC or the appropriate corporate credit union as guarantors or obligors in respect of the loans. Similarly, USC will not book a loan owed by the corporate to it in the transaction, nor will the corporate book a loan owed by the natural person credit union to it. Rather, the debt will be booked exclusively by the CLF as its asset.

As noted above, the CLF will continue to rely on USC as master servicer for all loans, and USC will continue to look to the appropriate corporate to service loans owed by its natural person credit union members. In connection with this change, CLF will require each corporate acting as loan servicer to subordinate any claims it might have in the collateral owned by natural person credit unions that may have been pledged to secure an advance from the corporate. The CLF may only fund advances on a fully secured basis. 12 CFR 725.19. Since a primary result of the changes discussed in this Notice will be that USC and the corporates will no longer act as guarantor of loans made to natural person credit unions, the subordination is necessary to assure the advances from the CLF comply with the collateral requirements in the rule. The CLF intends that all new loans funded after January 30, 2009, will be handled in accordance with the new procedures.

C. Documents. The agreements by which the changes described herein are accomplished take the form of an Assignment Agreement between the CLF and USC, by which existing loans are assigned without recourse by USC to the CLF, along with an amendment to the Repayment, Security and Credit Reporting Agreement between CLF and USC, dated September 13, 1982, which will implement the changes for loans made after January 30, 2009. The Board is publishing both of these agreements, as contemplated by § 725.21 of the CLF rule. 12 CFR 725.21. The agreements are

set out as Appendices A and B, respectively, to this Notice.[1]

By the National Credit Union Administration Board on January 22, 2009.

Mary Rupp,

Secretary of the Board.

Appendix A

Assignment Agreement Between the National Credit Union Administration Central Liquidity Facility and U.S. Central Federal Credit Union

This Assignment Agreement (the ''Assignment Agreement'') is between the National Credit Union Administration Central Liquidity Facility (the ''CLF'') and U.S. Central Federal Credit Union (''U.S. Central''), effective January 30, 2009 (the ''Effective Date'').

Whereas, the CLF and U.S. Central have entered into that certain National Credit Union Administration Central Liquidity Facility Repayment, Security and Credit Reporting Agreement as Prescribed by the Facility for Agent Group Representatives, dated effective September 13, 1982 (the ''Agreement''), as amended by amendment effective January 30, 2009 (the ''Amended Agreement''); and

Whereas, prior to the effective date of the Amended Agreement, the CLF made Facility Advances to U.S. Central as Agent Group Representative for the purpose of funding Agent loans by corporate credit union members of the U.S. Central Agent Group to their natural person credit union members (''Agent Loans''); and

Whereas, on the Effective Date of this Assignment Agreement, U.S. Central has received an assignment from each member of the U.S. Central Agent Group of all Agent Loans that are not in default; and

Whereas, U.S. Central desires to assign all such Agent Loans to the CLF on the Effective Date and the CLF is willing to accept that assignment.

Now, Therefore, U.S. Central and the CLF agree as follows:

1. On the Effective Date, U.S. Central hereby assigns to the CLF, without recourse to U.S. Central, all outstanding Agent Loans with an aggregate principal amount equal to the aggregate principal amount of Facility advances made by the CLF to U.S. Central pursuant to the Agreement to fund such Agent Loans and the CLF accepts that assignment in full satisfaction of the respective obligations of U.S. Central to repay the amount of the respective Facility advances pursuant to the Agreement.

2. U.S. Central acknowledges and agrees that it shall act as the Master Servicer for the CLF of those Agent Loans pursuant to the Amended Agreement.

Accepted and Agreed:

U.S. Central Federal Credit Union

By: _____

Its: _____

Date: _____

National Credit Union Administration Central Liquidity Facility

By: _____

Its: _____

Date: _____

Appendix B

Amendment to the National Credit Union Administration Central Liquidity Facility Repayment, Security And Credit Reporting Agreement as Prescribed by the Facility for Agent Group Representatives

This Amendment (the ''Amendment'') to the National Credit Union Administration Central Liquidity Facility Repayment, Security and Credit Reporting Agreement as Prescribed by the Facility for Agent Group Representatives, dated effective September 13, 1982 (the ''Agreement''), between the National Credit Union Administration Central Liquidity Facility (the ''CLF'' or the ''Facility'') and U.S. Central Federal Credit Union (''U.S. Central'' or ''Agent Group Representative'') is effective as of the date listed below.

Whereas, the CLF and U.S. Central have previously entered into the Agreement pursuant to which the CLF makes Facility Advances to U.S. Central for the purpose of funding Agent Loans by the corporate credit union members of the U.S. Central Agent Group to natural person credit unions; and

Whereas, the CLF and U.S. Central wish to amend the Agreement to provide a mechanism whereby, among other things, certain Agent Loans may be assigned to the CLF.

Now, therefore, the CLF and U.S. Central agree as follows:

1. Capitalized terms used in this Amendment and not otherwise defined shall have the meaning as used in the Agreement or in 12 CFR 725, as applicable.

2. This Amendment shall be effective on the date executed by the CLF.

3. Subsection (ix) of Section 3 of the Agreement is amended by adding the phrase ''Except as provided in Section 20,'' at the beginning of the subsection.

4. Section 4 of the Agreement is amended by adding the phrase ''Except as provided in Section 20,'' at the beginning of the section.

5. Subsection (xii) of Section 5 of the Agreement is amended by adding the phrase ''Except as provided in Section 20,'' at the beginning of the subsection.

6. Section 8 of the Agreement is amended by adding the phrase ''Except as provided in Section 20,'' at the beginning of the section.

7. Section 20 is amended by renumbering the current section as Section 21 and inserting a new Section 20 to read as follows:

''(20) *Alternative Agent Loan Program.* The Facility may direct, from time to time, that Facility advances shall be made pursuant to this Section 20. From and after the effective date specified by the Facility for Facility advances to be made subject to this Section 20, all Facility advances made on or after the specified date shall be made pursuant to this Section 20, until the Facility notifies the Agent Group Representative of the date that Facility advances shall no longer be made pursuant to this Section 20.

(i) Funds constituting Facility advances made pursuant to this Section 20 shall be ''Facility Funding'' and shall be transmitted without recourse to the Agent Group Representative, who shall, as agent for the Facility, transmit such funds to the central credit union member of the Agent Group making the Agent Loan serving as the basis of the request for the Facility advance, provided however, that the Agent Loan funded by Facility Funding and requested by the Agent Group Representative is assigned to the Facility.

(ii) If any Agent Loan serving as the basis for a request for a Facility advance is not made, the Agent Group Representative shall require that the Agent member receiving such Facility Funding promptly return the Facility Funding with respect to such transaction to the Agent Group Representative who shall then promptly return such funds to the Facility.

(iii) With respect to Facility Funding pursuant to this Section, the Agent Group Representative shall enter into an assignment and servicing agreement (the ''Servicing Agreement'') with each Agent member of the Facility who will receive Facility Funding for Agent Loans. The Servicing Agreement shall provide that each such Agent Loan is (A) automatically assigned by the Agent to the Agent Group Representative; and (B) subject to a representation of the Agent that the Agent Loan is supported by a first priority security interest in collateral sufficient to satisfy the requirements of Part 725.19 (a) of NCUA's Rules and Regulations. In addition, the Servicing Agreement shall also provide that claims of the Agent member against collateral supporting the Agent Loan shall be subordinate to claims of the Facility based on such Agent Loan against such collateral. The Agent member shall service each Agent Loan made by such Agent member and promptly remit all payments received by the Agent member on such Agent Loan or the proceeds from the disposition of collateral, in the event of a default on the Agent Loan to the Agent Group Representative who shall serve as master servicer (''Master Servicer'') of such Agent Loans for the Facility.

(iv) Upon assignment of the Agent Loan to the Agent Group Representative, the Agent Group Representative hereby assigns such Agent Loan to the Facility and the Facility hereby accepts each such assignment.

[1] The Board understands that, in anticipation of these changes, USC, as CLF's Agent Representative, has already executed a new CLF Agent Representative Assignment and Servicing Agreement (Agreement) with each corporate. The Agreement provides that loans representing CLF advances in existence as of December 30, 2008 and made through a corporate are assigned to USC. The Agreement, which also confirms the subordination by each corporate of its claims to any asset of the borrower to that of the CLF, will also apply prospectively. Because the CLF is not a party to this Agreement, it is not included as an Appendix to this Notice.

(v) The Agent Group Representative shall service each such Agent Loan for the Facility as Master Servicer, and promptly remit to the Facility all payments of principal and interest received by the Master Servicer on each such Agent Loan. Unless otherwise directed by the Facility, the Master Servicer shall automatically, upon receipt, deposit all payments received by the Master Servicer pertaining to Agent Loans to the Facility's S019 account at U.S. Central.

8. Except as modified herein, all provisions of the Agreement shall remain in full force and effect.

Accepted and Agreed:

U.S. Central Federal Credit Union

By: _____

National Credit Union Administration Central Liquidity Facility

By: _____

Effective Date: January 30, 2009.

[FR Doc. E9–1748 Filed 1–27–09; 8:45 am]

BILLING CODE 7535–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of additional meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 27, 2009.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Initiatives (at Historically Black Colleges and Universities, High Hispanic Enrollment Institutions, and/or Tribal Colleges and Universities), submitted to the Division of Education Programs, at the January 15, 2009 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E9–1822 Filed 1–27–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Syracuse University Site Visit, Proposal Review Panel for Physics (1208).

Date and Time: Wednesday, February 11, 2009; 8:30 a.m.–6:30 p.m. Thursday, February 12, 2009; 8 a.m.–3 p.m.

Place: Syracuse University, New York.

Type of Meeting: Partially Closed.

Contact Person: Dr. James Reidy, Program Director for Elementary Particle Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7392.

Purpose of Meeting: To provide an evaluation concerning the proposal submitted to the National Science Foundation.

Agenda

Wednesday, February 11, 2009

8:30 a.m.–9 a.m. Closed—Executive Session.

9 a.m.–10:15 a.m. Open—Overview by Professor Stone.

10:30 p.m.–12 p.m. Closed—Overview and Executive Sessions.

1 p.m.–4 p.m. Open—Faculty Presentations.

4 p.m.–6:30 p.m. Closed—Executive Session.

Thursday, February 12, 2009

8 a.m.–9:30 a.m. Closed—Executive Session and Discussion with Faculty.

9:30 a.m.–10:30 a.m. Open—Video From CERN.

10:30 a.m.–11 a.m. Closed—Meeting with Associate VP for Research.

11 a.m.–1 p.m. Open—Tour of Laboratory and Shop Facilities. Lunch with Students.

1 p.m.–2:30 p.m. Closed—Executive Session, close out with Faculty only.

2:30 p.m.–3 p.m. Open—Close out.

Reason for Closing: The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: January 22, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–1817 Filed 1–27–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–036; NRC–2008–0616]

Entergy Operations, Inc.; River Bend Station Unit 3 Combined License Application; Notice of Cancellation of Environmental Scoping Process and Public Scoping Meeting

Entergy Operations, Inc. (EOI) on behalf of itself; Entergy Louisiana, LLC (ELL); Entergy Gulf States Louisiana, L.L.C. (EGSL); and Entergy Mississippi, Inc. (EMI) has submitted an application for a combined license (COL) to build Unit 3 at its River Bend Station (RBS) site, located on approximately 3,330 acres in West Feliciana Parish on the Mississippi River, approximately three miles southeast of St. Francisville, Louisiana and 24 miles north-northwest of Baton Rouge, Louisiana. EOI submitted the application for the COL to the U.S. Nuclear Regulatory Commission (NRC) on September 25, 2008, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 52.

A notice of intent to prepare an environmental impact statement and conduct scoping process was published in the **Federal Register** on January 5, 2009 (74 FR 324). On January 9, 2009, EOI submitted a letter to NRC requesting that the staff suspend its review of the RBS Unit 3 COL application. The purpose of this notice is to inform the public that the NRC has canceled the scoping process and the associated scoping meeting for this application.

Questions about this cancellation should be directed to Mr. Andrew Kugler at 301–415–2828 or via e-mail at *Andrew.Kugler@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of January 2009.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E9–1779 Filed 1–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–414; NRC–2009–0020]

Duke Energy Carolinas, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–52 issued to Duke Energy Carolinas, LLC (the licensee) for operation of the Catawba Nuclear Station, Unit 2, located in York County, South Carolina.

The proposed amendment would allow a one-time limited duration extension of the Technical Specification (TS) Surveillance (SR) 3.3.1.4 frequency. SR 3.3.1.4 is a Trip Actuating Device Operational Test (TADOT) of the reactor trip breakers (RTBs) and reactor trip bypass breakers.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Reactor Trip System (RTS) serves as accident mitigation equipment and is not required to function unless an accident occurs. The reactor trip bypass breakers are utilized to support testing of the reactor trip breakers (RTBs) while at power. This equipment does not affect any accident initiators or precursors. The proposed extension of the Technical Specification (TS) Surveillance Requirement (SR) 3.3.1.4 Frequency for RTBs does not affect its interaction with any system whose failure or malfunction could initiate an accident. Therefore, the probability of an accident previously evaluated is not significantly increased.

The risk evaluation performed in support of this amendment request demonstrates that the consequences of an accident are not significantly increased. As such, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of the NRC granting of this proposed change. No changes are being made to the plant which will introduce any new or different accident causal mechanisms.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Based on the availability of the RTS equipment and the low probability of an accident, Catawba concludes that the proposed extension of the surveillance test interval does not result in a significant reduction in the margin of safety. The margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be significantly impacted by the proposed change. The risk implications of this request were evaluated and found to be acceptable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's (''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the

NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www/nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or

(2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated January 20, 2009, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of January 2009.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–1775 Filed 1–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–238; NRC–2009–0019]

Nuclear Ship Savannah; Notice of Receipt and Availability for Comment of Post Shutdown Decommissioning Activities Report

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Receipt and availability for public inspection and comment of Post Shutdown Decommissioning Activities Report (PSDAR) for the Nuclear Ship Savannah (NS Savannah), Facility Operating License No. NS–1.

SUMMARY: On December 11, 2008, the U.S. Department of Transportation—Maritime Administration (MARAD) submitted its PSDAR for the NS Savannah. The PSDAR provides an overview of MARAD's proposed decommissioning activities, schedule, and costs for the NS Savannah. The NS Savannah was brought to power in 1961 and removed from service in 1970. Final reactor shutdown occurred in November 1970 and defueling was completed in fall 1971. The NS Savannah is currently located at the Canton Marine Terminal in Baltimore, Maryland. The PSDAR, dated December 11, 2008, was placed in NRC's Agency-wide Document Access and Management System (ADAMS) with Accession No. ML083500100.

DATES: Submit comments by February 13, 2009. Comments received after this date will be considered if it is practical to do so.

ADDRESSES: The public is invited to submit comments on the PSDAR. Comments may be submitted in written or electronic form. Comments will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Written comments can be mailed to: John T. Buckley, U.S. Nuclear Regulatory Commission, Mail Stop T8F5, Washington, DC 20555–0001. Written comments can be hand delivered to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. The PSDAR may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy the PSDAR for a fee. The PSDAR is also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into ADAMS, which provides text and image files of the PSDAR through Accession No. ML083500100. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6607 or Toll Free: 800–368–5642, x–6607, or e-mail *john.buckley@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of January 2009.

For the Nuclear Regulatory Commission.

John T. Buckley,

Senior Project Manager, Decommissioning and Uranium Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–1778 Filed 1–27–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c1–5 OMB Control No. 3235–0471 SEC File No. 270–422.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of

information provided for in the following rule: Rule 15c1–5 (17 CFR 240.15c1–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c1–5 states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 278 respondents collect information annually under Rule 15c1–5 and that approximately each respondent would spend 10 hours per year collecting this information (2,780 hours in aggregate). There is no retention period requirement under Rule 15c1–5. This Rule does not involve the collection of confidential 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 control number.

Comments should be directed to:

(i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and

(ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: January 21, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1714 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c1–6; OMB Control No. 3235–0472; SEC File No. 270–423.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 15c1–6 (17 CFR 240.15c1–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 556 respondents collect information annually under Rule 15c1–6 and that each respondent would spend approximately 10 hours annually complying with the collection of information requirement (approximately 5,560 hours in aggregate).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and

(ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: January 21, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1715 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c1–7; OMB Control No. 3235–0134; SEC File No. 270–146.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 15c1–7 (17 CFR 240.15c1–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c1–7 states that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) the name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place. The Commission estimates that 556 respondents collect information related to approximately 400,000 transactions annually under Rule 15c1–7 and that each respondent would spend approximately 5 minutes on the collection of information for each transaction, for approximately 33,333 aggregate hours per year (approximately 60 hours per respondent).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and

(ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: January 21, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1716 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19d–2; OMB Control No. 3235–0205; SEC File No. 270–204.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the existing collection of information of Rule 19d–2 (17 CFR 240.19d–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 19d–2 prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately eight respondents will utilize this application procedure annually, with a total burden of 24 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments regarding the above information should be directed to the following persons:

(i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and

(ii) Charles Boucher, Director/Chief Information Officer, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: January 21, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1717 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form 2–E under Rule 609, SEC File No. 270–222, OMB Control No. 3235–0233.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 609 (17 CFR 230.609) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires small business investment companies and business development companies that have engaged in offerings of securities that are exempt from registration pursuant to Regulation E under the Securities Act of 1933 (17 CFR 230.601 to 610a) to report semi-annually on Form 2–E (17 CFR 239.201) the progress of the offering. The form solicits information such as the dates an offering has commenced and has been completed, the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. This information assists the staff in determining whether the issuer has stayed within the limits of an offering exemption.

Form 2–E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the offering in order to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

During the calendar year 2008, there were five filings of Form 2–E by three respondents. The Commission estimates, based on its experience with disclosure documents generally and Form 2–E in particular, and based on informal contacts with the investment company industry, that the total annual burden associated with information collection and Form 2–E preparation and submission is four hours per filing or 20 hours for all respondents.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: January 22, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1873 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59284; File No. SR–BATS–2009–002]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.8, Entitled ''Obligations of Market Makers.''

January 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2009, BATS Exchange, Inc. (''BATS''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) 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

The Exchange is proposing to amend BATS Rule 11.8, entitled ''Obligations of Market Makers,'' to provide Exchange functionality to Market Makers who wish to have the Exchange automatically enter orders on their behalf in order to comply with the obligation to maintain continuous two-sided limit orders in securities in which they are registered to trade.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide any Member of the Exchange that is registered as a Market Maker with Exchange system functionality to have the Exchange enter and maintain on its behalf ''stub quotes'' (i.e., quotes that are substantially far away from the Exchange's best bid or offer such that they are unlikely to be executed).[5] As part of its Market Maker obligations, pursuant to BATS Rule 11.8(a)(1), a Market Maker is required to maintain continuous, two-sided limit orders in the securities in which the Market Maker is registered to trade. In order to assist Exchange Market Makers with this obligation, the Exchange proposes to offer functionality through which Market Makers could choose to have the Exchange enter and maintain a limit order on either side of the market on their behalf. At 9 a.m. Eastern Time, the Exchange will extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's behalf. Specifically, the Market Maker would instruct the Exchange to enter limit orders of $0.0001 as a bid and $99,999.99 as an offer in the amount of one round lot each. Such orders will be posted by the Exchange as BATS Only Orders,[6] and will be maintained on the Exchange during Regular Trading Hours[7] unless cancelled by the Market Maker pursuant to the Exchange's Rules.[8]

According to the Exchange, the proposed rule change would allow the Exchange to provide functionality similar to that provided by both the Nasdaq Stock Market LLC (''NASDAQ'') and NYSE Arca Equities, Inc. (''NYSE Arca'') to market makers registered with such exchanges. In particular, the Exchange represents that registered market makers on NASDAQ have the ability to enter ''stub quotes'' through the NASDAQ system in order to ensure that they are continually meeting their quoting obligations.[9] Similarly, the Exchange represents that NYSE Arca provides its registered market makers with the ability to direct that exchange to enter orders on their behalf called ''Q Orders,'' which automatically refresh in the NYSE Arca system,[10] including orders that would be considered to be ''stub quotes.''

Although the Exchange believes that its registered Market Makers will be at or near the best bid or offer of the Exchange during much of the trading day, without stub quote functionality, and due to the speed of the modern trading environment, some Market Makers may not have a posted quote on one or both sides of the market for small periods of time, even for fractions of a second. The Exchange believes that the system functionality provided under the proposed rule change will provide Market Makers with a useful tool that they can utilize to meet their quoting obligations on the Exchange. Accordingly, the modifications to BATS Rule 11.8 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange also believes that the proposed functionality is similar to that provided by other national securities exchanges and permissible under such exchanges' approved rules.[11]

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by encouraging Market Makers to register with and trade on the Exchange by providing such Market Makers with system functionality that will assist them in maintaining continuous, two-sided limit orders in the securities in which they are registered.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As with all BATS quotes, these stub quotes would be firm quotes and, as such, would be immediately and automatically executable. However, to the extent such an execution could be considered clearly erroneous it would subject to review under Rule 11.17 (Clearly Erroneous Executions).

[6] As defined in BATS Rule 11.9(c)(4).

[7] Defined in BATS Rule 1.5(v) as 9:30 a.m. to 4 p.m. Eastern Time.

[8] *See* BATS Rule 11.9(e).

[9] *See* Securities Exchange Act Release No. 56586 (October 1, 2007), 72 FR 57085 (October 5, 2007) (SR–NASDAQ–2007–069).

[10] *See* NYSE Arca Rule 7.31(k).

[11] *See, e.g.*, NYSE Arca Rule 7.31(k).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Changes 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]

Rule 19b–4(f)(6)(iii) [16] requires the Exchange to give the Commission written notice of the Exchange's intent to file a proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or shorter time as designated by the Commission. The Exchange has satisfied this requirement.

As described above and in its filing with the Commission, the Exchange believes that the proposed rule change is consistent with the rules of another self-regulatory organization. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4.[17]

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2009–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2009–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2009–002 and should be submitted on or before February 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1872 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59273; File No. SR–FINRA–2008–067]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules Governing Financial Responsibility in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt a new, consolidated set of financial responsibility rules. Accordingly, FINRA proposes to adopt FINRA Rules 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties), 4140 (Audit) and 4521 (Notifications, Questionnaires and Reports) in the Consolidated FINRA Rulebook and to delete NASD Rules 3130 and 3131, NASD IM–3130, Incorporated NYSE Rules 312(h), 313(d), 325, 326, 328, 416.20, 418, 420, 421 and NYSE Rule Interpretations 313(d)/01, 313(d)/02, 325(c)(1), 325(c)(1)/01 and 416/01. FINRA also proposes to revise FINRA Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). Lastly, FINRA proposes to make conforming revisions to Section 4(g) of Schedule A to the FINRA By-Laws.

The text of the proposed rule change is attached hereto as Exhibit A.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change. In addition, FINRA discussed comments it received in response to a *Regulatory Notice*[3] it published in May of 2008 requesting comment on the proposed rule change.[4] The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[5] FINRA is proposing to adopt a new, consolidated set of financial responsibility rules. Accordingly, FINRA proposes to adopt FINRA Rules 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties), 4140 (Audit) and 4521 (Notifications, Questionnaires and Reports) in the Consolidated FINRA Rulebook and to delete NASD Rules 3130 and 3131, NASD IM–3130, Incorporated NYSE Rules 312(h), 313(d), 325, 326, 328, 416.20, 418, 420, 421 and NYSE Rule Interpretations 313(d)/01, 313(d)/02, 325(c)(1), 325(c)(1)/01 and 416/01. FINRA also proposes to revise FINRA Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). Lastly, FINRA proposes to make conforming revisions to Section 4(g) of Schedule A to the FINRA By-Laws.

Currently, both NASD and NYSE Rules[6] contain provisions governing financial responsibility. These provisions have played an important role in supporting the SEC's minimum net capital and other financial responsibility requirements by establishing criteria promoting the permanency of member's capital, requiring the review and approval of material financial transactions and establishing criteria intended to identify member firms approaching financial difficulty and to monitor their financial and operational condition. For that reason, FINRA has placed high priority on expeditiously developing the unified set of proposed rules for inclusion in the Consolidated FINRA Rulebook. FINRA believes that the proposed rules would incorporate many of [these] the provisions in the existing rules but would streamline and reorganize the provisions. In addition, FINRA has tiered many provisions to apply only to those firms that clear or carry customer accounts.[7]

(A) Proposed FINRA Rule 4110 (Capital Compliance)

(1) Authority To Increase Capital Requirement

Proposed FINRA Rule 4110(a), based primarily on NYSE Rule 325(d), would enable FINRA to prescribe greater net capital requirements for carrying and clearing members, or require any such member to restore or increase its net capital or net worth, when deemed necessary for the protection of investors or in the public interest. The authority to act under the proposed rule would reside with FINRA's Executive Vice President charged with oversight for financial responsibility (or his or her written officer delegate) (referred to as ''FINRA's EVP''). To execute such authority, FINRA would be required to issue a notice pursuant to Proposed FINRA Rule 9557 (a ''Rule 9557 notice''). FINRA believes that proposed FINRA Rule 9557, much like the current rule, would afford a member adequate safeguards because, among other things, it provides opportunity for an expedited hearing pursuant to Proposed FINRA Rule 9559.[8]

Proposed FINRA Rule 4110(a) would be a new provision for FINRA members that are not Dual Members (''non-NYSE members'') that are carrying or clearing members. However, it would not apply to introducing firms or to certain firms with limited business models (together, ''non-clearing firms'').[9] In this regard, certain Dual Members that currently are subject to NYSE Rule 325(d)—namely those NYSE member firms that are not carrying or clearing members (''NYSE non-clearing firms'')—would not be subject to the similar requirement in the FINRA Rule. All member firms that are subject to the requirement would have an opportunity to request an expedited hearing if they receive a Rule 9557 notice, which would be a new procedural right not available under NYSE Rule 325(d).

As FINRA has explained in the Notice, the NYSE staff historically employed NYSE Rule 325(d) in limited circumstances, and FINRA anticipates that it would apply Proposed FINRA Rule 4110(a) in similar fashion. The proposed rule would enable FINRA to respond promptly to extraordinary, unanticipated or emergency circumstances. Under Proposed FINRA Rule 4110(a), FINRA's EVP could require a carrying or clearing member to comply with increased capital requirements in circumstances such as where unanticipated systemic market events threaten the member firm's capital, or where the member firm maintains an undue concentration in illiquid products. In such instances, FINRA's EVP may, for example, find it appropriate, in the public interest, to raise the applicable ''haircut'' (that is, to increase the percentage of the market value of certain securities or commodities positions by which the member must reduce its net worth) or treat certain assets as non-allowable in computing net capital.

(2) Suspension of Business Operations

Proposed FINRA Rule 4110(b)(1) is based in part on NASD Rule 3130(e) and would provide that, unless otherwise permitted by FINRA, a member firm must suspend all business operations

[3] *See* FINRA *Regulatory Notice 08–23* (Proposed Consolidated FINRA Rules Governing Financial Responsibility) (May 2008) (the ''Notice'').

[4] *See infra*, Item II.C. for more information on the Notice and the comments received in response thereto.

[5] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[6] For convenience, the Incorporated NYSE Rules are referred to as the ''NYSE Rules.''

[7] All requirements set forth in the proposed rules that would apply to firms that clear or carry customer accounts would also apply to firms that operate pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i). For further clarification in response to commenter concerns, *see* Section 2 under Item II.C. *See also infra* note 9.

[8] *See also* Section (F) under this Item.

[9] For clarification, introducing firms and firms with limited business models (for example, firms that engage exclusively in subscription-basis mutual fund transactions, direct participation programs, or mergers and acquisitions activities) are not deemed carrying or clearing members and therefore would not be subject to Proposed FINRA Rule 4110(a), or for that matter any of the other provisions of the proposed rules that would apply only to carrying or clearing members.

during any period of time in which it is not in compliance with SEA Rule 15c3–1. This requirement is consistent with current law.[10]

As with NASD Rule 3130(e), Proposed FINRA Rule 4110(b)(1) is self-operative (that is, a firm would automatically be required to comply with the provision without any direction from FINRA). Notwithstanding that the proposed provision is self-operative, FINRA may issue a Rule 9557 notice directing a member that is not in compliance with SEA Rule 15c3–1 to suspend all or a portion of its business. Upon receipt of a Rule 9557 notice, the firm would have the right to request an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member firm's non-compliance with Proposed FINRA Rule 4110(b)(1).

(3) Withdrawal of Equity Capital

To further the goal of financial stability, Proposed FINRA Rule 4110(c)(1) would prohibit a member from withdrawing equity capital for a period of one year, unless otherwise permitted by FINRA in writing. In response to commenter [11] requests for clarification of this provision, the proposed rule expressly provides that, subject to the requirements of Proposed FINRA Rule 4110(c)(2), members would not be precluded from withdrawing profits earned.

FINRA anticipates that approvals for the early withdrawal of equity capital pursuant to Proposed FINRA Rule 4110(c)(1) would be granted on a limited basis.[12]

Proposed FINRA Rule 4110(c)(2) would apply only to carrying or clearing members and would prohibit any such member, without the prior written approval of FINRA, from withdrawing capital, paying a dividend or effecting a similar distribution that would reduce the member's equity, or making any unsecured advance or loan to a stockholder, partner, sole proprietor, employee or affiliate, where such withdrawals, payments, reductions, advances or loans in the aggregate, in any rolling 35-calendar-day period, on a net basis, would exceed 10 percent of the member's excess net capital.[13] This provision is based in part on NYSE Rule 312(h) and SEA Rule 15c3–1(e). While it would be a new requirement for non-NYSE members that are carrying or clearing members, it would not apply to non-clearing firms. In this regard, NYSE non-clearing firms that currently are subject to NYSE Rule 312(h) would not be subject to the similar provision in the FINRA Rule. FINRA further notes that the 10 percent limit set forth in Proposed FINRA Rule 4110(c)(2) would provide a *de minimis* exception; current NYSE Rule 312(h) does not include such an exception.

(4) Sale-and-Leasebacks, Factoring, Financing, Loans and Similar Arrangements

To ensure the permanency of net capital in contemplated sale-and-leaseback, factoring, financing and similar arrangements, Proposed FINRA Rule 4110(d)(1)(A) would provide that no carrying or clearing member may consummate a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring or financing arrangement with respect to any unsecured accounts receivable, where any such arrangement would increase the member's tentative net capital by 10 percent or more,[14] without the prior written authorization of FINRA.

Proposed FINRA Rule 4110(d)(1)(A) is based on NYSE Rule 328(a), but would apply only to carrying and clearing members. While the provision would be new for non-NYSE members that are carrying or clearing members, it would not apply to non-clearing firms. In this regard, NYSE non-clearing firms that currently are subject to NYSE Rule 328(a) would no longer be subject to the similar provision in the FINRA Rule. Moreover, unlike NYSE Rule 328(a), Proposed FINRA Rule 4110(d)(1)(A) includes a *de minimis* exception by permitting a member to consummate, without FINRA's prior authorization, a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring or financing arrangement with respect to any unsecured accounts receivable where the arrangement would not increase the member firm's tentative net capital by 10 percent or more.[15]

Proposed FINRA Rule 4110(d)(1)(B), which is also based on NYSE Rule 328(a), would provide that no carrying member may consummate any arrangement concerning the sale or factoring of customer debit balances, irrespective of amount, without the prior written authorization of FINRA. The provision would be new for non-NYSE members that are carrying members.

Proposed FINRA Rule 4110(d)(2) is based on NYSE Rule 328(b), but would apply only to carrying and clearing members. The provision would require FINRA's prior approval for any loan agreement entered into by such a member, the proceeds of which exceed 10 percent of the member's tentative net capital [16] and that is intended to reduce the deduction in computing net capital for fixed assets and other assets that cannot be readily converted into cash under SEA Rule 15c3–1(c)(2)(iv). Because the provision would apply only to carrying and clearing members, NYSE non-clearing firms would be relieved from current requirements under NYSE Rule 328(b). In addition, unlike NYSE Rule 328(b), the proposed rule would include a *de minimis* exception.

Proposed FINRA Rule 4110(d)(3) provides that any member that is subject to paragraphs (d)(1)(A), (d)(1)(B) or (d)(2) of Proposed FINRA Rule 4110 would be prohibited from consummating, without FINRA's prior written authorization, any arrangement pursuant to those paragraphs if the aggregate of all such arrangements would exceed 20 percent of the member's tentative net capital.[17]

Proposed FINRA Rule 4110(d)(4) implements a requirement of the SEC's net capital rule and therefore would apply to all members. It provides that any agreement relating to a determination of a ''ready market'' for securities based upon the securities being accepted as collateral for a loan by a bank under SEA Rule 15c3–1(c)(11)(ii) must be submitted to, and be acceptable to, FINRA before the securities may be deemed to have a ''ready market.'' When determining the acceptability of a loan agreement, pursuant to Proposed FINRA Rule 4110(d)(4), FINRA staff would, as a general matter, consider such factors as whether the bank would have sole recourse under the agreement and

[10] The Commission notes that the net capital rule requires that ''every broker or dealer shall at all times have and maintain'' certain specified levels of net capital. The Commission further notes that to the extent a broker-dealer fails to maintain at least the amount of net capital specified in that rule, it must cease doing a securities business. [*See* 72 FR 12862, at 12872.]

[11] All references to ''commenters'' are to persons that submitted comments in response to the Notice. For further information on this issue, *see infra* Item II.C.

[12] *See* Section 4 under Item II.C.

[13] The calculation of 10 percent of excess net capital must be based on the member's excess net capital position as reported in its most recently filed Form X–17A–5. The member must assure itself that the excess net capital so reported has not materially changed since the time the form was filed.

[14] The calculation of 10 percent of tentative net capital must be based on the member's tentative net capital position as reported in its most recently filed Form X–17A–5. The member must assure itself that the tentative net capital so reported has not materially changed since the time the form was filed.

[15] *See supra* note 14.

[16] *See supra* note 14.

[17] *See supra* note 14.

whether the term of the loan is at least one year. FINRA expects that a determination of acceptability can generally be made within approximately one week.

(5) Subordinated Loans, Notes Collateralized by Securities and Capital Borrowings

Proposed FINRA Rule 4110(e) is based in part on current NYSE Rule 420 and would address the requirements for subordinated loans and loans made to general partners of members that are partnerships.

Proposed FINRA Rule 4110(e)(1) would implement Appendix D of SEA Rule 15c3–1 and require that all subordinated loans or notes collateralized by securities must meet such standards as FINRA may require to ensure the continued financial stability and operational capability of a member, in addition to meeting those standards specified in Appendix D of SEA Rule 15c3–1.[18] Appendix D of SEA Rule 15c3–1 requires that all subordination agreements must be found acceptable by the Examining Authority before they can become effective.

Proposed FINRA Rule 4110(e)(2) would require that, unless otherwise permitted by FINRA, each member whose general partner enters into any secured or unsecured borrowing, the proceeds of which will be contributed to the capital of the member, must, in order for the proceeds to qualify as capital acceptable for inclusion in computation of the member's net capital, submit to FINRA for approval a signed copy of the loan agreement. The loan agreement must have at least a 12-month duration and provide non-recourse to the assets of the member firm. Moreover, because a general partner's interest may allow the lender to reach into the assets of the broker-dealer, FINRA is requiring a provision in the loan agreement that would estop the lender from having that right.

(B) Proposed FINRA Rule 4120 (Regulatory Notification and Business Curtailment)

(1) Regulatory Notification

Proposed FINRA Rule 4120(a) is based on current NYSE Rule 325(b), but would apply only to carrying and clearing members. The proposed rule would require any such member promptly, but in any event within 24 hours, to notify FINRA when certain specified financial triggers are reached.[19] This would be a new notification requirement for non-NYSE members that are carrying or clearing members; it would not, however, apply to non-clearing firms. Accordingly, NYSE non-clearing firms would no longer be subject to these requirements.

(2) Restrictions on Business Expansion

Proposed FINRA Rule 4120(b) is based on NASD Rule 3130(c) and NYSE Rule 326(a) and addresses circumstances under which a member would be prohibited from expanding its business.

Proposed FINRA Rule 4120(b)(1), which is self-operative, would apply only to carrying and clearing members, and requires any such member, unless otherwise permitted by FINRA, to refrain from expanding its business during any period in which any of the conditions described in Proposed FINRA Rule 4120(a)(1) continue to exist for the specified time period. While NASD Rule 3130(c) includes comparable provisions, the requirement would now be self-operative for non-NYSE members that are carrying or clearing members. Proposed FINRA Rule 4120(b) also provides that FINRA may issue a Rule 9557 notice directing any such member not to expand its business, in which case the member would have the right to request an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member's non-compliance with Proposed FINRA Rule 4120(b)(1).

Unlike the self-operative nature of paragraph (b)(1), Proposed FINRA Rule 4120(b)(2) authorizes FINRA, for any financial or operational reason, to restrict any member's ability to expand its business by the issuance of a Rule 9557 notice. In all such cases, the member would have the right to request an expedited hearing. This same right currently applies to NASD Rule 3130(c)(2).

(3) Reduction of Business

Proposed FINRA Rule 4120(c) is based on NASD Rule 3130(d) and NYSE Rule 326(b) and addresses circumstances under which a member would be required to reduce its business.

Proposed FINRA Rule 4120(c)(1), which is self-operative, would apply only to carrying and clearing members, requiring any such member, unless otherwise permitted by FINRA in writing, to reduce its business to a point enabling its available capital to exceed the standards set forth in Proposed FINRA Rule 4120(a)(1) when any of the enumerated conditions continue to exist for the specified time period. While NASD Rule 3130(d) includes comparable provisions, the requirement would now be self-operative for non-NYSE members that are carrying or clearing members. Proposed FINRA Rule 4120(c)(1) also provides that FINRA may issue a Rule 9557 notice directing any such member to reduce its business, in which case the member would have the right to an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member's non-compliance with Proposed FINRA Rule 4120(c)(1).

Unlike the self-operative nature of paragraph (c)(1), proposed FINRA Rule 4120(c)(2) authorizes FINRA, for any financial or operational reason, to require any member firm to reduce its business by the issuance of a notice in accordance with Rule 9557. In all such cases, the member firm would have the right to request an expedited hearing. This same right currently applies to NASD Rule 3130(d)(2).

(C) Proposed FINRA Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties)

Proposed FINRA Rule 4130 would be substantially identical to NASD Rule 3131 except that the proposed rule would reflect FINRA as the designated examining authority and make other conforming revisions. The proposed rule would apply only to certain firms that are subject to the Treasury Department's liquid capital requirements.

(D) Proposed FINRA Rule 4140 (Audit)

Proposed FINRA Rule 4140 would incorporate FINRA's existing authority under NASD Rule 3130 and NASD IM–3130 and NYSE Rule 418 to request an audit or an agreed-upon procedures review under certain circumstances. The proposed rule would impose a late fee of $100 for each day that a requested

[18] *See* SEA Rule 15c3–1d. Note that the proposed Supplementary Material would require that, for purposes of Proposed FINRA Rule 4110(e)(1), the member must assure itself that any applicable provisions of the Securities Act of 1933 and/or state Blue Sky laws have been satisfied, and may be required to submit evidence thereof to FINRA prior to approval of the subordinated loan agreement. *See* Proposed FINRA Rule 4110.01 (Compliance with Applicable Law).

[19] The determination of whether the financial triggers were reached must be based on the member's financial position as reported in its most recently filed Form X–17A–5. The member must assure itself that its financial position so reported has not materially changed since the time the form was filed.

report is not timely filed, up to a maximum of 10 business days.

(E) Proposed FINRA Rule 4521 (Notifications, Questionnaires and Reports)

Drawing in part on NASD IM–3130 and Rule 3150 and NYSE Rules 325(b)(2), 416 [20] and 421(2),[21] Proposed FINRA Rule 4521 would address FINRA's authority to request certain information from members to carry out its surveillance and examination responsibilities. As further described below, many of the provisions would apply only to carrying and clearing members.

Proposed FINRA Rule 4521(a) would provide that each carrying or clearing member must submit to FINRA such financial and operational information regarding the member or any of its correspondents as FINRA deems essential for the protection of investors and the public interest. The provisions would be new for certain non-NYSE members that are carrying or clearing members.[22]

Proposed FINRA Rule 4521(b) would require every member approved by the SEC pursuant to SEA Rule 15c3–1 to use the alternative method of computing net capital contained in Appendix E to that Rule to file such supplemental and alternative reports as may be prescribed by FINRA.

Proposed FINRA Rule 4521(c) would require each carrying or clearing member to notify FINRA in writing no more than 48 hours after its tentative net capital, as computed pursuant to SEA Rule 15c3–1, has declined 20 percent or more from the amount reported in its most recent FOCUS Report or, if later, the most recent such notification filed with FINRA. This would be a new requirement for non-NYSE members that are carrying or clearing members.

Proposed FINRA Rule 4521(d) would require that, unless otherwise permitted by FINRA in writing, member firms carrying margin accounts for customers must submit, on a settlement date basis: (1) The total of all debit balances in securities margin accounts; and (2) the total of all free credit balances contained in cash or margin accounts. This would be a new requirement for non-NYSE member firms that carry margin accounts.

In response to commenter suggestion, Proposed FINRA Rule 4521(e) has been revised to provide that a late fee of $100 would be imposed for each day that any report, notification or information a member is required to file pursuant to Rule 4521 is not timely filed, up to a maximum of 10 business days.

(F) Proposed FINRA Rules 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series)

FINRA Rules 9557 and 9559 address service of notice to member firms that are experiencing financial or operational difficulties and the related hearing procedures. The proposed rule change would make a number of conforming revisions to FINRA Rules 9557 and 9559 in light of several of the proposed financial responsibility rules (Proposed FINRA Rules 4110, 4120 and 4130). In response to commenter concerns, FINRA re-iterates that the proposed rule change also would include new provisions to afford members with an appeals process that is both more expedited than that currently provided under FINRA Rules 9557 and 9559 and provides members with adequate safeguards.[23] For example:

- Proposed FINRA Rule 9557(d) would provide that the requirements referenced in a Rule 9557 notice served upon a member are immediately effective. Under the proposed rule change, a timely request for a hearing would stay the effective date for 10 business days after the service of the notice or until a written order is issued pursuant to Proposed FINRA Rule 9559(o)(4)(A) (whichever period is less), unless it is determined that such a stay cannot be permitted with safety to investors, creditors or other member firms;
- To ensure an expedited process, Proposed FINRA Rule 9557(e) would require a member to file with the Office of Hearing Officers any written request for a hearing within two business days after service of the Rule 9557 notice;
- Proposed FINRA Rule 9559(f)(1) would provide that, after a respondent subject to a Rule 9557 notice files a written request for a hearing with the Office of Hearing Officers, the hearing must be held within five business days of such filing;
- Proposed FINRA Rule 9559(o)(4)(A) would provide that, within two business days of the date of the close of the hearing, the Office of Hearing Officers must issue the Hearing Panel's written order. The Hearing Panel order would be effective when issued. (The proposed rule change provides that, pursuant to Proposed FINRA Rules 9559(o)(4)(B) and 9559(p), the written decision explaining the reasons for the Hearing Panel's determinations must be issued within seven days of the issuance of the written order.)

Proposed FINRA Rules 9557 and 9559 set forth a number of other enhancements and clarifications of procedure. For example, Proposed FINRA Rule 9557(e)(1) provides that a member served with a Rule 9557 notice may request from FINRA staff a letter of withdrawal of the notice. The member may make this request either in lieu of or in addition to filing with the Office of Hearing Officers the written request for a hearing. The proposed rule change would enable FINRA staff, in response to the member's request, either to withdraw the Rule 9557 notice or to reduce its requirements and/or restrictions.[24] The member may submit a request for a letter of withdrawal to FINRA staff at any time after the notice is served. If such request is denied by FINRA staff, the proposed rule change provides that the member shall not be precluded from making a subsequent request or requests.[25]

If a member requests a hearing within two business days after service of a 9557 notice, the member may seek to contest (1) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal issued by FINRA staff pursuant to Rule 9557(g)(2), where applicable) and/or (2) FINRA staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member. The Hearing Panel may then either approve or withdraw the requirements and/or

[20] NYSE Rules 416(a), 416(c) and 416.10 will remain in the Transitional Rulebook to be addressed later in the rulebook consolidation process. On July 11, 2008, the SEC approved FINRA's proposal to delete NYSE Rule 416(b). *See* Securities Exchange Act Release No. 58149 (July 11, 2008), 73 FR 42385 (July 21, 2008) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR–FINRA–2008–034).

[21] Because FINRA proposes to delete NYSE Rule 421(2) and its related provision Rule 421.40, the proposed rule change would, in combination with rule change SR–FINRA–2008–033 (which was approved by the SEC on September 4, 2008 and took effect on December 15, 2008), delete NYSE Rule 421 in its entirety. *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR–FINRA–2008–033); *see also* FINRA *Regulatory Notice* 08–57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

[22] FINRA notes that NASD Rule 3150 (Reporting Requirements for Clearing Firms) currently requires most carrying and clearing members to submit such data to FINRA. Rule 3150 will be addressed later in the rulebook consolidation process.

[23] *See* Section 7 under Item II.C.

[24] *See* Proposed FINRA Rule 9557(g)(2).

[25] *See* Proposed FINRA Rule 9557(e)(1).

restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds the member has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[26] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will streamline and reorganize existing rules that govern financial responsibility. Further, FINRA believes that the proposed rule change will provide greater regulatory clarity with respect to these issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In May 2008, FINRA published the Notice [27] requesting comment on the proposed rule changes. A copy of the Notice is attached as Exhibit 2a.[28] The comment period ended on June 13, 2008. Seventeen commenters responded to the Notice. Copies of the comment letters received, and a list of the commenters, are attached as Exhibit 2b.[29]

1. General Comments; Tiering of Requirements

Commenters expressed general support for rule consolidation,[30] including support specifically for FINRA's proposal to tier certain requirements to apply only to firms that carry or clear customer accounts.[31]

2. Members Operating Pursuant to SEA Rule 15c3–3(k)(2)(i) Exemption

As proposed in the Notice, the requirements set forth in the proposed rules that would apply to carrying and clearing members would also apply to members that operate pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i).[32] The Notice referred to such members as ''(k)(2)(i) members,'' and the relevant provisions of the proposed rule text as published in the Notice designated them by the phrase ''operating pursuant to the exemptive provisions of Rule 15c3–3(k)(2)(i).''

Commenters suggested that the application of the term ''(k)(2)(i) member'' was in need of further explanation or reconsideration,[33] and that it would be better either to eliminate references to Rule 15c3–3(k)(2)(i) from the proposed rules or to specify that the proposed rules apply to (k)(2)(i) members that hold customer cash or securities.[34]

FINRA agrees that the application of the proposed rules with respect to (k)(2)(i) members as put forward in the Notice should be clarified. Accordingly, the proposed rules have been revised to eliminate the phrase ''operating pursuant to the exemptive provisions of Rule 15c3–3(k)(2)(i).'' Further, in response to commenter requests for clarification, FINRA notes that a firm ''operates'' pursuant to the exemptive provisions of Rule 15c3–3(k)(2)(i), and is therefore included as a clearing or carrying member for purposes of the proposed rules, if it either holds customer funds in a bank account established pursuant to Rule 15c3–3(k)(2)(i) or clears customer transactions through such an account. FINRA's records currently indicate that there are approximately seventy such member firms.

3. Authority To Increase Capital Requirements

Four commenters expressed concern regarding the scope of FINRA's authority under Proposed FINRA Rule 4110(a).[35] Three of the four suggested that the factors under which FINRA would take action pursuant to the rule should be clearly spelled out (including one suggestion that procedural protections are needed); [36] the fourth of these commenters suggested FINRA should not undermine haircut determinations that the SEC makes pursuant to SEA Rule 15c3–1.[37] One commenter suggested that new rules are not needed.[38]

FINRA staff understands the noted concerns, but believes that the proposed rule does not lend itself to prescribed parameters. As explained in Section (A)(1) of Item II.A.1, because Proposed Rule 4110(a) is intended to enable FINRA to respond promptly to extraordinary, unanticipated or emergency circumstances (a goal acknowledged by at least one commenter),[39] FINRA does not agree that it is in the public interest to limit the rule's application by listing specific circumstances under which FINRA would exercise its authority. FINRA expects to employ its authority pursuant to the proposed rule judiciously. Further, FINRA rejects the argument that the proposed rule does not provide adequate safeguards; FINRA would be expressly required to issue a Rule 9557 notice, which among other things permits a member opportunity for an expedited hearing pursuant to Proposed FINRA Rule 9559.

4. Withdrawal of Equity Capital

Three commenters said that Proposed FINRA Rule 4110(c)(1) is too restrictive or is more stringent than current or proposed SEC requirements.[40] One suggested that the proposed rule be revised to clarify that withdrawal of profits from an earlier period would be permitted.[41] Two said that the proposed rule should either be deleted or, if adopted, the factors that FINRA would take into consideration in approving requests should be articulated; [42] one of

[26] 15 U.S.C. 78o–3(b)(6).

[27] *See supra*, note 3.

[28] The Commission notes that while provided in Exhibit 2a to FINRA's filing with the Commission, the Notice is not attached hereto. The Notice can be accessed online at *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p038509.pdf*.

[29] The Commission notes that while provided in Exhibit 2b to the filing, the list of the commenters and comment letters received by FINRA are not attached hereto. Those comment letters can be accessed online at *http://www.finra.org/Industry/Regulation/Notices/2008/P038501*. As stated previously, all references to ''commenters'' are to the commenters to the Notice, which are listed in Exhibit 2b.

[30] Northwestern, Wachovia, FSI, SIFMA, ING and Federated.

[31] ING, Thornburg and CAI.

[32] The Notice explained that ''operating'' pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i) is not meant to include firms that have *elected* the exemption but do not operate as such.

[33] SIFMA, CAI and Kinkade.

[34] SIFMA and ING.

[35] FSI, ING, Federated and Fischer.

[36] FSI, ING and Fischer.

[37] Federated.

[38] Cantella.

[39] Federated.

[40] FSI, Northwestern and CAI.

[41] SIFMA.

[42] FSI and Northwestern.

these two commenters suggested that a period of time should be established within which FINRA would process any requests pursuant to the proposed rule.[43] One suggested that the proposed rule would restrict a parent company's support of a broker-dealer subsidiary.[44] One raised concerns regarding the proposed rule's potential impact on smaller or start-up firms.[45]

Proposed FINRA Rule 4110(c)(2) drew comments that were similar to those for Proposed FINRA Rule 4110(c)(1). Five commenters said that the proposed rule is too restrictive or is more stringent than current or proposed SEC requirements.[46] One suggested the proposed rule would put the financial management of firms in FINRA's hands, rather than the firms exercising their own management.[47] Two suggested that a period of time should be established within which FINRA would process any requests pursuant to the proposed rule.[48] Three suggested that the factors FINRA would consider in approving requests should be articulated.[49] One suggested that the proposed rule would be burdensome for smaller firms.[50]

In response, FINRA notes that Proposed FINRA Rule 4120 (Regulatory Notification and Business Curtailment)—in particular Proposed FINRA Rule 4120.01—sets forth examples of the types of factors that FINRA staff would take into consideration when considering whether to approve a request for a withdrawal of equity capital pursuant to Proposed Rules 4110(c)(1) or (c)(2). FINRA would consider the overall risks particular to the member and what the member's condition would be after the proposed withdrawal. FINRA believes that the proposed rules are not burdensome because, as a general matter, requests for a withdrawal can be handled in a routine manner—FINRA's decision typically would be issued in approximately three business days. Further, FINRA notes that Proposed FINRA Rule 4110(c)(2) provides a 10 percent *de minimis* threshold. Lastly, FINRA agrees that Proposed FINRA Rule 4110(c)(1) should not preclude the withdrawal of profits, and has accordingly revised the proposed rule to clarify that, subject to the requirements of Proposed FINRA Rule 4110(c)(2), the rule does not preclude a member from withdrawing profits earned.[51]

Several commenters appeared to express concerns regarding Proposed FINRA Rule 4110(c)(2) based on the belief that the rule would apply to introducing firms or firms with limited business models.[52] Because such members generally are not carrying or clearing members, they would not be subject to the proposed rule. As explained in the Notice and re-iterated in FINRA's filing with the Commission, non-clearing firms generally include, for example, firms that engage exclusively in subscription-basis mutual fund transactions, direct participation programs, or mergers and acquisitions activities.[53]

5. Audits

One commenter said that Proposed FINRA Rule 4140 is too broad and that the imposition of an audit pursuant to the rule would essentially operate as a sanction, for which reason there should be an appeal process in the event an audit is imposed.[54] FINRA disagrees. Though NASD Rule 3130 and NASD IM–3130 provide for an appeal process pursuant to current Rule 9557, NYSE Rule 418 includes no such provision. FINRA emphasizes that the purpose of Proposed FINRA Rule 4140 is to confer upon FINRA necessary authority, especially in emergency circumstances. The proposed rule would be invoked only in situations where there are ''concerns regarding the accuracy or integrity of a member's financial statements, books and records or prior audited financial statements.'' [55] FINRA emphasizes that only FINRA's EVP, or his or her written officer delegate, would have the authority to request an audit.

6. Notifications, Questionnaires and Reports

One commenter suggested expanding the late fee provided for under Proposed FINRA Rule 4521(e) to include all reports, notifications and information required under Rule 4521. (As published in the Notice, the rule would have limited the late fee to financial and operational information regarding a member or its correspondents as required under Proposed FINRA Rule 4521(a); the commenter proposed to expand that to include for instance the margin account information required under the rule.) [56] FINRA agrees with this proposal as consistent with the goal of clarity and ease of administration, and has revised the proposed rule accordingly.[57]

7. Service of Notice and Hearing Procedures

Two commenters expressed concern regarding the scope of the discretion that Proposed FINRA Rule 9557 would grant to FINRA staff.[58] Two commenters suggested that the proposed rule change does not provide sufficient time to broker-dealers; [59] one suggested giving members five days to decide whether to pursue an appeal rather than two.[60] One commenter suggested that the effectiveness of a Rule 9557 notice should be two days after being issued, rather than immediately effective.[61] This same commenter also said that the proposed rule change grants substantial discretion to FINRA's CEO to deny a stay of a Rule 9557 notice after a member requests a hearing and that FINRA should be required either to present the member with a factual finding in the event a stay is denied, or that the FINRA decision be made in consultation with a third party, such as the National Adjudicatory Council or the SEC.

In response, FINRA emphasizes that because Proposed FINRA Rules 9557 and 9559 are designed to enable FINRA to respond to emergency circumstances, FINRA does not believe that the effectiveness of a Rule 9557 notice should be anything other than immediate. Similarly, FINRA sees no reason to extend the time within which a member must decide whether to pursue an appeal. FINRA intentionally designed Rules 9557 and 9559 to provide an expedited hearing process for affected parties. Moreover, because the restrictions or requirements set forth in a Rule 9557 notice generally are stayed during the appeal process, it is imperative that the matter be resolved expeditiously in the event the Hearing Panel approves the restrictions and/or requirements. With respect to stays, FINRA further notes that the proposed rule change provides that the Rule 9557 notice is routinely stayed during the time of the hearing. The proposed rule change does not require the member to request the stay—the stay is provided for unless the CEO makes a determination otherwise, when

[43] FSI.

[44] Northwestern.

[45] FSI.

[46] SIFMA, ING, Kinkade, Baum and CAI. *See also* note 52 *infra* and accompanying text.

[47] Capstone.

[48] SIFMA and FSI.

[49] FSI, Baum and TBT.

[50] Baum.

[51] *See* Section (A)(3) under Item II.A.1.

[52] Colonnade, TBT and Capstone.

[53] *See* note 9 under Item II.A.1.

[54] ING.

[55] *See* Proposed FINRA Rule 4140(a).

[56] Thornburg.

[57] *See* Section (E) under Item II.A.1.

[58] SIFMA and Cantella.

[59] FSI and ING.

[60] FSI.

[61] SIFMA.

necessary for the safety of investors, creditors or other member firms. Moreover, FINRA anticipates that the CEO would use such authority only in extraordinary circumstances. Accordingly, the only revisions that FINRA has made with respect to Proposed Rules 9557 and 9559 have been with a view to further procedural enhancements and clarifications of the rules as published in the Notice.[62]

8. Additional Comments

In response to comments, FINRA has made a number of additional clarifying revisions to the proposed rules or has provided clarifying explanations, including:

- One commenter suggested that the language of Proposed FINRA Rule 4110(e)(2) be clarified with respect to LLCs.[63] In response, FINRA has reconsidered the proposed rule and determined that it is not necessary to apply it to LLCs;[64]
- One commenter proposed clarifying language for Proposed FINRA Rule 4120(c)(3)(I).[65] In response, FINRA has made clarifying revisions;
- One commenter suggested that FINRA clarify that though the requirements of Proposed FINRA Rule 4120(a) would only apply to carrying and clearing members, all members nonetheless remain subject to the requirements of SEA Rule 17a–11, and that the notification that would be required under the proposed rule is in addition to the notification required under SEA Rules 17a–11(b) and (c).[66] FINRA agrees that all members should be mindful of their obligations under Rule 17a–11 in addition to those that the proposed rule would impose;
- Three commenters objected to provisions in the proposed rules (one commenter as to Proposed FINRA Rule 4110(d)(4),[67] the others as to Proposed FINRA Rule 4110(e)(2)[68] pertaining to review by FINRA of loan documentation. In response, FINRA believes that the documentation reviews as set forth in the proposed rules are a necessary part of FINRA's function. FINRA encourages members to consult Proposed FINRA Rule 4120.01 for examples of the types of factors that FINRA staff would consider when reviewing loan documentation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–067. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–067 and should be submitted on or before February 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Florence E. Harmon,

Deputy Secretary.

Exhibit A

Proposed new language is italicized; deletions are in brackets.

* * * * *

Text of Proposed New FINRA Rules 4110, 4120, 4130, 4140, 4521, 9557 and 9559 (Proposed FINRA Rules 9557 and 9559 Are Marked to Show Changes from FINRA Rules 9557 and 9559, Respectively)

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

4100. FINANCIAL CONDITION

4110. Capital Compliance

(a) When necessary for the protection of investors or in the public interest, FINRA may, at any time or from time to time with respect to a particular carrying or clearing member or all carrying or clearing members, pursuant to authority exercised by FINRA's Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate, prescribe greater net capital or net worth requirements than those otherwise applicable, including more stringent treatment of items in computing net capital or net worth, or require such member to restore or increase its net capital or net worth. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(b) (1) Unless otherwise permitted by FINRA, a member shall suspend all business operations during any period in which it is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3–1.

(2) FINRA may issue a notice pursuant to Rule 9557 directing a

[62] *See* Section (F) under Item II.A.1.

[63] SIFMA.

[64] *See* Section (A)(5) under Item II.A.1.

[65] SIFMA.

[66] Thornburg. This commenter also suggested a number of clarifying edits with respect to Proposed FINRA Rules 4130(a) and 4521. FINRA has aligned Proposed FINRA Rule 4130(a) with the current requirements of NASD Rule 3131(a) (*see* Section (C) under Item II.A.1) and has re-organized Proposed FINRA Rule 4521 for purposes of clarity.

[67] Baum.

[68] Cantella and Kinkade.

[69] 17 CFR 200.30–3(a)(12).

member that is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3–1 to suspend all or a portion of its business.

(c) (1) Any equity capital contributed by a member may not be withdrawn for a period of one year, unless otherwise permitted by FINRA in writing. Subject to the requirements of paragraph (c)(2) of this Rule, this paragraph shall not preclude a member from withdrawing profits earned.

(2) A carrying or clearing member shall not, without the prior written approval of FINRA, withdraw capital, pay a dividend or effect a similar distribution that would reduce such member's equity, or make any unsecured advance or loan to a stockholder, partner, sole proprietor, employee or affiliate, where such withdrawals, payments, reductions, advances or loans in the aggregate, in any 35 rolling calendar day period, on a net basis, exceeds 10% of its excess net capital.

(d) Sale-And-Leasebacks, Factoring, Financing, Loans and Similar Arrangements

(1)(A) No carrying or clearing member shall consummate a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring, or financing arrangement with respect to any unsecured accounts receivable, where any such arrangement would increase the member's tentative net capital by 10% or more, without the prior written authorization of FINRA.

(B) No carrying member shall consummate any arrangement concerning the sale or factoring of customer debit balances, irrespective of amount, without the prior written authorization of FINRA.

(2) Any loan agreement entered into by a carrying or clearing member, the proceeds of which exceed 10% of such member's tentative net capital and which is intended to reduce the deduction in computing net capital for fixed assets and other assets which cannot be readily converted into cash under SEA Rule 15c3–1(c)(2)(iv), must be submitted to and be acceptable to FINRA, prior to such reduction becoming effective.

(3) Members subject to paragraphs (d)(1)(A), (d)(1)(B) or (d)(2), shall not consummate any arrangement pursuant to such paragraph(s) if the aggregate of all such arrangements outstanding would exceed 20% of such member's tentative net capital, without the prior written authorization of FINRA.

(4) Any agreement relating to a determination of a ''ready market'' for securities based upon the securities being accepted as collateral for a loan by a bank under SEA Rule 15c3–1(c)(11)(ii), must be submitted to and be acceptable to FINRA before the securities may be deemed to have a ''ready market.''

(e) Subordinated Loans, Notes Collateralized by Securities and Capital Borrowings

(1) All subordinated loans or notes collateralized by securities shall meet such standards as FINRA may require to ensure the continued financial stability and operational capability of the member, in addition to those specified in Appendix D of SEA Rule 15c3–1.

(2) Unless otherwise permitted by FINRA, each member partnership whose general partner enters into any secured or unsecured borrowing, the proceeds of which will be contributed to the capital of the member, shall submit the following for approval in order for such proceeds to qualify as capital acceptable for inclusion in the computation of the net capital of the member:

A signed copy of the loan agreement which must:

(A) Have at least a 12 month duration; and

(B) Provide non-recourse to the assets of the member.

Additional documents may be required, the nature of which will vary, depending upon the legal status of the lender e.g., an individual, bank, estate, trust, corporation, partnership, etc.

• • • **Supplementary Material: ——**

.01 Compliance with Applicable Law. For purposes of paragraph (e)(1), the member shall assure itself that any applicable provisions of the Securities Act of 1933 and/or State Blue Sky laws have been satisfied and may be required to submit evidence thereof to FINRA prior to approval of the subordinated loan agreement.

4120. Regulatory Notification and Business Curtailment

(a) Notification

(1) Each carrying or clearing member shall promptly, but in any event within 24 hours, notify FINRA in writing if its net capital falls below the following percentages:

(A) The member's net capital is less than 150 percent of its minimum dollar net capital requirement or such greater percentage thereof as may from time to time be designated by FINRA;

(B) The member is subject to the aggregate indebtedness requirement of SEA Rule 15c3–1, and its aggregate indebtedness is more than 1,000 percent of its net capital;

(C) The member elects to use the alternative method of computing net capital pursuant to SEA Rule 15c3–1(a)(1)(ii), and its net capital is less than the level specified in SEA Rule 17a–11(c)(2);

(D) The member is approved to use the alternative method of computing net capital pursuant to SEA Rule 15c3–1e, and

(i) Its tentative net capital as defined in SEA Rule 15c3–1(c)(15) is less than 50 percent of the early warning notification amount required by SEA Rule 15c3–1(a)(7)(ii), or

(ii) Its net capital is less than $1.25 billion;

(E) The member is registered as a Futures Commission Merchant pursuant to the Commodity Exchange Act, and its net capital is less than 120% of the minimum risk-based capital requirements of Commodity Exchange Act Rule 1.17; or

(F) The member's deduction of capital withdrawals, which it anticipates making, whether voluntarily or as a result of a commitment, including maturities of subordinated liabilities entered into pursuant to Appendix D of SEA Rule 15c3–1, during the next six months, would result in any one of the conditions described in paragraph (a)(1)(A) through (E) of this Rule.

(b) Restrictions on Business Expansion

(1) Except as otherwise permitted by FINRA in writing, a member that carries customer accounts or clears transactions shall not expand its business during any period in which any of the conditions described in paragraph (a)(1) continue to exist for more than 15 consecutive business days, provided that such condition(s) has been known to FINRA or the member for at least five consecutive business days. FINRA may issue a notice pursuant to Rule 9557 directing any such member not to expand its business; however, FINRA's authority to issue such notice does not negate the member's obligation not to expand its business in accordance with this paragraph (b)(1).

(2) No member may expand its business during any period in which FINRA restricts the member from expanding its business for any financial or operational reason. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(3) For purposes of paragraph (b) of this Rule, the term ''expansion of business'' may include:

(A) Net increase in the number of registered representatives or other producing personnel;

(B) Exceeding average capital commitments over the previous three

months for market making or block positioning;

(C) Initiation of market making in new securities or any new proprietary trading or other commitment in securities or commodities in which a market is not made (other than riskless trades associated with customer orders);

(D) Exceeding average commitments over the previous three months for underwritings;

(E) Opening of new branch offices;

(F) Entering any new line of business or deliberately promoting or expanding any present lines of business;

(G) Making unsecured or partially secured loans, advances, drawings, guarantees or other similar receivables; and

(H) Such other activities as FINRA deems appropriate under the circumstances, in the public interest or for the protection of investors.

(c) Reduction of Business

(1) Except as otherwise permitted by FINRA in writing, a member that carries customer accounts or clears transactions is obligated to reduce its business to a point enabling its available capital to exceed the standards set forth in paragraph (a)(1)(A) through (F) of this Rule, when any of the following conditions continue to exist for more than 15 consecutive business days, provided that such condition(s) has been known to FINRA or the member for at least five consecutive business days:

(A) The member's net capital is less than 125 percent of its minimum dollar net capital requirement or such greater percentage thereof as may from time to time be designated by FINRA;

(B) The member is subject to the aggregate indebtedness requirement of SEA Rule 15c3–1, and its aggregate indebtedness is more than 1,200 percent of its net capital;

(C) The member elects to use the alternative method of computing net capital pursuant to SEA Rule 15c3–1(a)(1)(ii), and its net capital is less than one percentage point below the level specified in SEA Rule 17a–11(c)(2);

(D) The member is approved to use the alternative method of computing net capital pursuant to SEA Rule 15c3–1e, and

(i) Its tentative net capital as defined in SEA Rule 15c3–1(c)(15) is less than 40 percent of the early warning notification amount required by SEA Rule 15c3–1(a)(7)(ii), or

(ii) Its net capital is less than $1 billion;

(E) The member is registered as a Futures Commission Merchant pursuant to the Commodity Exchange Act, and its net capital is less than 110% of the minimum risk-based capital requirements of Commodity Exchange Act Rule 1.17; or

(F) The member's deduction of capital withdrawals, including maturities of subordinated liabilities entered into pursuant to Appendix D of SEA Rule 15c3–1, scheduled during the next six months, would result in any one of the conditions described in paragraph (c)(1)(A) through (E) of this Rule.

FINRA may issue a notice pursuant to Rule 9557 directing any such member to reduce its business to a point enabling its available capital to exceed the standards set forth in paragraph (a)(1)(A) through (F) of this Rule; however, FINRA's authority to issue such notice does not negate the member's obligation to reduce its business in accordance with this paragraph (c)(1).

(2) A member must reduce its business as directed by FINRA for any financial or operational reason. In any such instance, FINRA shall issue a notice pursuant to Rule 9557.

(3) For purposes of paragraph (c) of this Rule, the term ''business reduction'' shall mean reducing or eliminating parts of a member's business in order to reduce the amount of capital required, which may include:

(A) Promptly paying all or a portion of free credit balances to customers;

(B) Promptly effecting delivery to customers of all or a portion of fully paid securities in the member's possession or control;

(C) Introducing all or a portion of its business to another member on a fully disclosed basis;

(D) Reducing the size or modifying the composition of its inventory and reducing or ceasing market making;

(E) Closing of one or more existing branch offices;

(F) Collecting unsecured or partially secured loans, advances, drawings, guarantees or other similar receivables;

(G) Accepting no new customer accounts;

(H) Restricting the payment of salaries or other sums to partners, officers, directors, shareholders, or associated persons of the member;

(I) Effecting liquidating or closing customer and/or proprietary transactions;

(J) Accepting only unsolicited customer orders; and

(K) Such other activities as FINRA deems appropriate under the circumstances in the public interest or for the protection of investors.

• • • Supplementary Material ——

.01 Exercise of Discretion by FINRA. The following are examples of the conditions under which FINRA may exercise its discretion pursuant to paragraphs (b)(2) or (c)(2) above:

(a) The member has experienced a substantial change in the manner in which it processes its business, which, in the view of FINRA, increases the potential risk of loss to customers or other members;

(b) The member's books and records are not maintained in accordance with the provisions of SEA Rules 17a–3 or 17a–4;

(c) The member is not in compliance, or is unable to demonstrate compliance, with applicable net capital requirements;

(d) The member is not in compliance, or is unable to demonstrate compliance, with SEA Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities);

(e) The member is unable to clear and settle transactions promptly; or

(f) The member's overall business operations are in such condition, given the nature of its business that, notwithstanding the absence of any of the conditions enumerated in paragraphs (a) through (e), a determination of financial or operational difficulty should be made.

.02 Correspondent Firms. The Rule contemplates that any restrictions or conditions imposed on a carrying or clearing member's business under this Rule may require that member to restrict the business activities of one or more correspondent firms for which the member clears, insofar as such business would be handled by such carrying or clearing member.

4130. Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties

(a) Application—For purposes of this Rule, the term ''member'' shall be limited to any member of FINRA registered with the SEC pursuant to Section 15C of the Exchange Act that is not designated to another self-regulatory organization by the SEC for financial responsibility pursuant to Section 17 of the Exchange Act and SEA Rule 17d–1.

(b) Each member subject to Section 402.2 of the rules of the Treasury Department shall comply with the capital requirements prescribed therein and with the provisions of this Rule.

(c) A member, when so directed by FINRA shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist for more than 15 consecutive business days:

(A) The member's liquid capital is less than 150 percent of the total haircuts or such greater percentage thereof as may

from time to time be prescribed by FINRA;

(B) The member's liquid capital minus total haircuts is less than 150 percent of its minimum dollar capital requirement; or

(C) The deduction of ownership equity and maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in (A) or (B) of this subparagraph (1); or

(2) FINRA restricts the member for any other financial or operational reason.

(d) A member, when so directed by FINRA, shall forthwith reduce its business:

(1) To a point at which the member would not be subject to a prohibition against expansion of its business as set forth in paragraphs (c)(1)(A), (B), or (C) of this Rule if any of the following conditions continue to exist for more than 15 consecutive business days:

(A) The member's liquid capital is less than 125 percent of total haircuts or such greater percentage thereof as may from time to time be prescribed by FINRA;

(B) The member's liquid capital minus total haircuts is less than 125 percent of its minimum dollar capital requirement; or

(C) The deduction of ownership equity and maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in (A) or (B) of this subparagraph (1); and

(2) As required by FINRA when it restricts a member for any other financial or operational reason.

(e) A member shall suspend all business operations during any period of time when the member is not in compliance with applicable liquid capital requirements as set forth in Section 402.2 of the rules of the Treasury Department. FINRA staff may issue a notice to such member directing it to suspend all business operations; however, the member's obligation to suspend all business operations arises from its obligations under Section 402.2 of the rules of the Treasury Department and is not dependent on any notice that may be issued by FINRA staff.

(f) Any notice directing a member to limit or suspend its business operations shall be issued by FINRA staff pursuant to Rule 9557.

4140. Audit

(a) FINRA may at any time, due to concerns regarding the accuracy or integrity of a member's financial statements, books and records or prior audited financial statements, direct any member to cause an audit to be made by an independent public accountant of its accounts, or cause an examination to be made in accordance with attestation, review or consultation standards prescribed by the AICPA. Such audit or examination shall be directed pursuant to authority exercised by FINRA's Executive Vice President charged with oversight for financial responsibility, or his or her written officer delegate, and shall be made in accordance with such requirements as FINRA may prescribe.

(b) Any member failing to file an audited financial and/or operational report or examination report under this Rule in the prescribed time shall be subject to a late fee as set forth in Schedule A Section 4(g)(1) to the FINRA By-Laws.

* * * * *

4500. BOOKS, RECORDS AND REPORTS

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4520. Financial Records and Reporting Requirements

4521. Notifications, Questionnaires and Reports

(a) Each carrying or clearing member shall submit to FINRA, or its designated agent, at such times as may be designated, or on an ongoing basis, in such form and within such time period as may be prescribed, such financial and operational information regarding the member or any of its correspondents as FINRA deems essential for the protection of investors and the public interest.

(b) Every member approved by the SEC pursuant to SEA Rule 15c3–1 to use the alternative method of computing net capital contained in Appendix E to that Rule shall file such supplemental and alternative reports as may be prescribed by FINRA.

(c) Each carrying or clearing member shall notify FINRA in writing, no more than 48 hours after its tentative net capital as computed pursuant to SEA Rule 15c3–1 has declined 20 percent or more from the amount reported in its most recent FOCUS Report or, if later, the most recent such notification filed with FINRA. For purposes of this paragraph, ''tentative net capital as computed pursuant to SEA Rule 15c3–1'' shall exclude withdrawals of capital previously approved by FINRA.

(d)(1) Unless otherwise permitted by FINRA in writing, members carrying margin accounts for customers are required to submit, on a settlement date basis, the information specified in paragraphs (d)(2)(A) and (d)(2)(B) of this Rule as of the last business day of the month. If a member has no information to submit, a report should be filed with a notation thereon to that effect. Reports are due as promptly as possible after the last business day of the month, but in no event later than the sixth business day of the following month. Members shall use such form as FINRA may prescribe for these reporting purposes.

(2) Each member carrying margin accounts for customers shall submit reports containing the following customer information:

(A) Total of all debit balances in securities margin accounts; and

(B) Total of all free credit balances in all cash accounts and all margin accounts.

(3) For purposes of this paragraph (d):

(A) Only free credit balances in cash and margin accounts shall be included in the member's report. Balances in short accounts and in Special Memorandum Accounts (as defined in Section 2.2 of Regulation T under the Exchange Act) shall not be considered as free credit balances.

(B) Reported debit or credit balance information shall not include the accounts of other organizations that are FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of customer pursuant to SEA Rule 15c3–3.

(e) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file any report, notification or information pursuant to this Rule, a late fee as set forth in Schedule A Section 4(g)(1) to the FINRA By-Laws.

(f) For purposes of this Rule, any report filed pursuant to this Rule containing material inaccuracies shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

* * * * *

9000. CODE OF PROCEDURE

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9500. OTHER PROCEEDINGS

* * * * *

9557. Procedures for Regulating Activities Under [NASD] Rules 4110, [3130] 4120 and 4130 [3131] Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of *Requirements and/or* Restrictions; *FINRA Action*

FINRA staff may issue a notice directing a member to *comply with the*

provisions of Rule 4110, 4120 or 4130 or restrict its business activities, either by limiting or ceasing to conduct those activities *consistent with Rule 4110, 4120 or 4130*, if FINRA staff has reason to believe that a condition specified in [NASD] Rule *4110, 4120* [3130] or *4130* [Rule 3131] exists. *A notice served under this Rule shall constitute FINRA action.*

(b) No Change.

(c) Contents of Notice

A notice issued under this Rule shall:

(1) State the specific grounds and include the factual basis for the FINRA action[.]*;*

(2) Specify the date of the notice and the requirements and/or restrictions being imposed by the notice;

(3) [The notice shall] state [when the FINRA action will take effect and] *that the requirements and/or restrictions imposed by the notice are immediately effective;*

(4) Specify [explain what the respondent must do to avoid such action] *the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice*[.]*;*

(5) Inform the member that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from FINRA staff, to result in automatic and immediate suspension unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;

(6) Explain that the member may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;

(7) [The notice shall] state that*, in addition to making a request for a letter of withdrawal of the notice,* the [respondent] *member* may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559[.]*;*

(8) [The notice also shall] inform the [respondent] *member* of the applicable deadline for filing a request for a hearing and [shall] state that a request for a hearing must set forth with specificity any and all defenses to the FINRA action[.]*; and*

(9) [In addition, the notice shall] explain that, pursuant to Rule[s 8310(a) and] 9559(n), a [Hearing Officer or, if applicable,] Hearing Panel[,] may approve[, modify] or withdraw *the requirements and/or restrictions* [any and all sanctions or limitations] imposed by the notice, and [may impose any other fitting sanction] *that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the member has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member.*

(d) Effective*ness* [Date] of *the Requirements and/or* Restrictions

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other members. Such a determination by FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period. [The restrictions referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.]

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless FINRA staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

(e) *Request for a Letter of Withdrawal of the Notice;* Request for a Hearing

A member served with a notice under this Rule may *request from FINRA staff a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or* file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

(1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member making the request must demonstrate to the satisfaction of FINRA staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request is denied by FINRA staff, the member shall not be precluded from making a subsequent request or requests.

(2) A request for a hearing shall be made *within two business days after service of a notice under this Rule* [before the effective date of the notice, as indicated in paragraph (d) of this Rule]. A request for a hearing must set forth with specificity any and all defenses to the FINRA action. *A request for a hearing may seek to contest:*

(A) The validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal pursuant to paragraph (g)(2) of this Rule, where applicable); and/or

(B) FINRA staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member.

(f) [Failure to Request Hearing]

[If a member does not timely request a hearing, the restrictions specified in the notice shall become effective seven days after service of the notice. The restrictions specified in the notice shall remain in effect until the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the FINRA department or office that is so designated reduces or removes the restrictions pursuant to paragraph (h) of this Rule.]

(g) [Order to] Enforcement of [Sanctions] Notice

[If FINRA staff determines that a] *A* member *that* has failed to comply with *the* [any] *requirements and/or* restrictions imposed by [a decision or] an effective notice under this Rule *shall be deemed, without further notice from FINRA staff, automatically and immediately suspended* [that have not been stayed, FINRA staff shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The order shall inform the member that it may apply for relief from the sanctions imposed by the order by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable]. *Such suspension shall remain in effect unless FINRA staff shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.*

[(h)] (g) Additional Requirements and/or Restrictions or the Removal or Reduction [or Removal] of Requirements and/or Restrictions; Letter of Withdrawal of the Notice

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in [NASD] Rule *4110 or 4120* [3130] or *4130* [3131], notwithstanding an effective notice[, order or decision under this Rule], FINRA staff may impose additional *requirements and/or* restrictions by [issuing] *serving* [a] *an additional* notice under paragraph (b) of this Rule. The *additional* notice shall inform the member that it may apply for relief from the additional *requirements and/or* restrictions by filing a written request for a *letter of withdrawal of the notice and/or a written request for a* hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such [a] *additional* notice.

(2) [Reduction or] Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal

(A) Removal or Reduction of Requirements and/or Restrictions

If*, upon the member's demonstration to the satisfaction of* FINRA staff*, FINRA staff* determines that any *requirements and/or* restrictions [previously] imposed *by a notice* under this Rule should be [reduced or] removed *or reduced*, FINRA staff shall serve *the member, pursuant to paragraph (b) of this Rule*, a written *letter of withdrawal that shall, in the sole discretion of FINRA staff, withdraw the* notice *in whole or in part* [on the member pursuant to Rule 9134]. *A notice that is withdrawn in part shall remain in force, unless FINRA staff shall remove the remaining requirements and/or restrictions.*

(B) Lifting of Suspension

If, upon the member's demonstration to the satisfaction of FINRA staff, FINRA staff determines that a suspension imposed by a notice under this Rule should be lifted, FINRA staff shall serve the member, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of FINRA staff, lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the member's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member being immediately suspended.

(h) FINRA Staff For purposes of this Rule, ''FINRA staff'' shall mean:

(1) The head of the FINRA department or office that issued the notice, or his or her written officer delegate; or

(2) If another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the FINRA department or office that is so designated, or his or her written officer delegate.

(i) Notice to Membership

FINRA shall provide notice of any *suspension* [final FINRA action taken] pursuant to this Rule in the next notice of Disciplinary and Other FINRA Actions.

* * * * *

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) No Change

(b) Computation of Time

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558, *unless otherwise specified.*

(c) Stays

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9551 through 955*6*[7], except that the effectiveness of a notice of a limitation or prohibition on access to services offered by FINRA or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

(d) Appointment and Authority of Hearing Officer and/or Hearing Panel

(1) For proceedings initiated under Rules 9553 and 9554, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556, 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. *For proceedings initiated under Rules 9551, 9552, 9555, 9556 and 9558*, [T]*t*he Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232. *For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the FINRA Financial Responsibility Committee.*

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule *other than those relating to Rule 9557.*

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or

Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under *a* Rule [9558] *that does not permit a stay of the effectiveness of the notice or where FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice*, the limitation, prohibition, *condition, requirement, restriction*, or suspension specified in the notice shall not be stayed pending resolution of the case [unless the Chief Hearing Officer or Hearing Officer assigned to the matter orders otherwise for good cause shown. Where one of the consolidated matters includes an action brought under Rule 9555 with respect to services to which the member or person does not have access, the effectiveness of a notice of a limitation or prohibition on access to services offered by FINRA or a member thereof shall not be stayed pending resolution of the case]. *Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.*

(f) Time of Hearing

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.

([1]*2*) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 [through] *and* 9558 files a written request for a hearing with the Office of Hearing Officers.

([2]*3*) A hearing shall be held within 60 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

([3]*4*) The timelines established by paragraphs (f)(1) [and] *through (f)*[(2)]*(3)* confer no substantive rights on the parties.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;

([1]*2*) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 [through] *and* 9558; and

([2]*3*) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555.

(h) Transmission of Documents

(1) Not less than *two business days before the hearing in an action brought under Rule 9557, not less than* seven days before the hearing in an action brought under Rules 9556 [through] *and* 9558, and not less than 40 days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) Not less than *two business days before the hearing in an action brought under Rule 9557, not less than* three days before the hearing in an action brought under Rules 9556 [through] *and* 9558, and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier. (i) through (m) No Change.

(n) Sanctions, Costs and Remands

(1) *In any action brought under the Rule 9550 Series, other than an action brought under Rule 9557*, [T]*t*he Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, *requirements, restrictions* or limitations imposed by the notice[. The Hearing Officer or, if applicable, the Hearing Panel] *and, pursuant to Rule 8310(a)*, [also] may also impose any other fitting sanction[, pursuant to Rule 8310(a)].

(2) *In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).*

(3) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 *regarding all actions brought under the Rule 9550 Series.*

([3]*4*) *In any action brought under the Rule 9550 Series, other than an action brought under Rule 9557*, [T]the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a *proposeed* written decision and provide it to the National Adjudicatory Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 [through] and 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a *proposed* written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9551, 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a *proposed* written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(4) Proceedings initiated under Rule 9557

(A) Written Order

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

(B) Written Decision

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the

requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the National Adjudicatory Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final FINRA action. *For decisions issued under Rules 9551 through 9556 and 9558*, [T]*t*he Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each FINRA member with which the respondent is associated.

([5]*6*) The timelines established by paragraphs (o)(1) through [(4)](5) confer no substantive rights on the parties.

(p) Contents of Decision

The decision*, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule,* shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

(2) the specific statutory or rule provision[s that were] alleged to have been violated *or providing the authority for the FINRA action*;

(3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted *or any condition specified in the notice*;

(4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel *regarding the alleged violation or condition specified in the notice* [as to whether the respondent violated any provision alleged in the notice];

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction*, requirement, restriction* or limitation imposed, the reasons therefore, and the date upon which such sanction*, requirement, restriction* or limitation shall become effective.

(q) Call for Review by the National Adjudicatory Council

(1) *For proceedings initiated under the Rule 9550 Series (other than Rule 9557),* [T]*t*he National Adjudicatory Council's Review Subcommittee may call for review a *proposed* decision [issued] *prepared by a Hearing Officer or, if applicable, Hearing Panel* [under the Rule 9550 Series] within 21 days after receipt of the decision from the Office of Hearing Officers. *For proceedings initiated under Rule 9557, the National Adjudicatory Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers.* Rule 9313(a) is incorporated *herein* by reference.

(2) No Change.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the National Adjudicatory Council Subcommittee or the National Adjudicatory Council may extend or shorten any time limits prescribed by this Rule *other than those relating to Rule 9557.*

(4) through (6) No Change.

(r) through (s) No Change.

* * * * *

Text of Proposed Changes to Section 4 of Schedule A to the FINRA By-Laws

SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

Section 1 through Section 3 No Change.

Section 4—Fees

(a) through (f) No Change.

(g)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph *(''Designated Reports''),* a fee of $100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to FINRA at least three business days prior to the due date; and

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(3) List of Designated Reports:

(A) SE[C]*A* Rule 17a–5—Monthly and quarterly FOCUS reports and annual audit reports; [and]

(B) SE[C]*A* Rule 17a–10—Schedule I[.]*;*

(C) FINRA Rule 4140—any audited financial and/or operational report or examination report required pursuant to Rule 4140; and

(D) FINRA Rule 4521—any report, notification or information required pursuant to Rule 4521.

(h) No Change.

IM-Section 4(b)(1) and (e) through Section 13 No Change.

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Text of Incorporated NYSE Rules To Remain in the Transitional Rulebook

Incorporated NYSE Rules

* * * * *

Rule 312. Changes Within Member Organizations

(a) through (g) No Change.

(h) *Reserved.* [No member corporation subject to Rule 325 shall, without the prior written consent of the Exchange, redeem or repurchase any shares of its stock on less than six months notice given to the Exchange no sooner than six months after the original issuance of such shares (or any predecessor shares). Each member corporation shall promptly notify the Exchange if any redemption or repurchase of any of its stock is postponed because prohibited under the provisions of Exchange Act Rule 15c3–1 (see 15c3–1(e)).]

(i) through (j) No Change.

Rule 313. Submission of Partnership Articles—Submission of Corporate Documents

(a) through (c) No Change.

(d) *Reserved.* [Whenever a member organization shall offer or sell any security, as defined under the Securities Act of 1933, as amended, or the General Rules and Regulations thereunder (the 1933 Act), or under the ''blue sky'' law or the regulations thereunder of any state in which it is proposed that the security be offered, which security is issued by the member organization for the purpose of raising capital under Rules 325 and 326 of the Board of Directors of the Exchange, the member organization must furnish the Exchange with an opinion of counsel in form and substance satisfactory to the Exchange as to whether or not the securities being offered or sold need be registered under the 1933 Act and a survey of the type customarily prepared in respect of the underwriting of securities, but not an opinion, as to what action, if any, need be taken with respect to such offer or sale under any applicable state ''blue sky'' law. If, in counsel's opinion, the securities need not be registered under the 1933 Act, his opinion shall state the exemption from the registration requirements of the 1933 Act upon which he is relying and the basis for such reliance. If the securities are required to be registered under the 1933 Act counsel's opinion shall include, in addition to such other statements as the Exchange in any particular case may require, a statement substantially to the effect that at the time the registration statement became effective, the registration statement and the prospectus (other than the financial

statements contained therein) complied as to form in all material respects with the requirements of the 1933 Act (and with the Trust Indenture Act of 1939, as amended, if applicable) and nothing has come to counsel's attention that would lead counsel to believe that the registration statement at the time it became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the prospectus at the time the registration statement became effective or at the time of sale of the security contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.]

[Prior to the consummation of the sale of the security, counsel shall furnish a statement to the Exchange as to the action taken in order to comply with the state ''blue sky'' law of any state in which the security is offered or sold.]

[Without limiting the generality of the foregoing, counsel, among other things, is expected to give appropriate consideration to (a) any other transactions pursuant to which the member organization has raised capital in the past, or expects to do so in the future, (b) the disclosure of material information regarding the member organization to offerees of the security, and (c) the need for representation by the purchaser of the securities as to his intention to hold the securities for investment.]

(e) through (f) No Change.

• • • **Supplementary Material: ——**

Information Regarding Partnership Articles

.10 through .12 No Change.

[.14 A–B–C agreements.—[Rescinded by NYSE–2005–77].]

[.18 Sole board member provision.—[Removed by NYSE–2005–77].]

Information Regarding Member Corporations

.20 through. 23 No Change.

* * * * *

Rule 416. Questionnaires and Reports

(a) No Change.

(b) No Change.

(c) No Change.

• • • **Supplementary Material: ——**

.10 No Change.

.20 *Reserved.* [Each member and member organization shall, on an ongoing basis and in such format as the Exchange may require, submit to the Exchange, or its designated agent, prescribed data of the member or member organization, and of any broker-dealer that is a party to a carrying agreement with a member or member organization pursuant to NYSE Rule 382.]

* * * * *

Text of NASD Rules to be Deleted in Their Entirety from the Transitional Rulebook

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3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

* * * * *

[3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties]

Entire text deleted.

[IM–3130. Restrictions on a Member's Activity]

Entire text deleted.

[3131. Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties]

Entire text deleted.

* * * * *

Text of Incorporated NYSE Rules and NYSE Rule Interpretations to be Deleted in Their Entirety from the Transitional Rulebook

Incorporated NYSE Rules

* * * * *

[Rule 325. Capital Requirements Member Organizations]

Entire text deleted.

[Rule 326(a). Growth Capital Requirement]

Entire text deleted.

[Rule 326(b). Business Reduction Capital Requirement]

Entire text deleted.

[Rule 326(c). Unsecured Loans and Advances]

Entire text deleted.

[Rule 326(d). Reduction of Elimination of Loans and Advances]

Entire text deleted.

* * * * *

[Rule 328. Sale-And-Leasebacks, Factoring, Financing and Similar Arrangements]

Entire text deleted.

* * * * *

[Rule 418. Audit]

Entire text deleted.

* * * * *

[Rule 420. Reports of Borrowings and Subordinate Loans For Capital Purposes]

Entire text deleted.

[Rule 421. Periodic Reports]

Entire text deleted.

* * * * *

NYSE RULE INTERPRETATION

[NYSE Rule 313 SUBMISSION OF PARTNERSHIP ARTICLES]

[SUBMISSION OF CORPORATE DOCUMENTS]

[(d) OPINION OF COUNSEL]

[/01 Loans, Demand Notes and Partners' Contributions]

Entire text deleted.

[/02 Independent Counsel]

Entire text deleted.

* * * * *

[Rule 325 CAPITAL REQUIREMENTS]

[(c)(1) Long Put or Call Options]

Entire text deleted.

[/01 SEC no-action letter to NYSE dated January 31, 1990 provides interim conditions for recognition of long unlisted options, for U.S. Government debt securities endorsed or guaranteed by a limited group of narrowly defined issuers.]

Entire text deleted.

* * * * *

[Rule 416 QUESTIONNAIRES AND REPORTS]

[/01 Gold and Silver Offerings]

Entire text deleted.

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[FR Doc. E9–1807 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59276; File No. SR–ISE–2009–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program for Directed Orders

January 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2009, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The proposed rule change has been filed by the ISE as effecting a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend the pilot period for the system change that identifies to a Directed Market Maker (''DMM'') the identity of the firm entering a Directed Order until May 29, 2009.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 5, 2006, the ISE initiated a system change to identify to a DMM the identity of the firm entering a Directed Order. The ISE filed this system change on a pilot basis under Section 19(b)(3)(A) of the Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4(f)(5) thereunder[5] so that it would be effective while the Commission considered a separate proposed rule change filed under Section 19(b)(2) of the Exchange Act to amend the ISE's rules to reflect the system change on a permanent basis (the ''Permanent Rule Change'').[6] The current pilot expires on January 31, 2009,[7] but the Commission has not yet taken action with respect to the Permanent Rule Change. Accordingly, the Exchange proposes to extend the pilot for an additional four months, until May 29, 2009, so that the system change will remain in effect while the Commission continues to evaluate the Permanent Rule Change.[8]

2. Statutory Basis

The basis under the Exchange Act is found in Section 6(b)(5), in that the propose rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Extension of the pilot program will allow the Exchange to continue operating under the pilot while the Commission considers the Permanent Rule Change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[9] and Rule 19b–4(f)(5)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–02. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–02 and should be submitted on or before February 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1808 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 17 CFR 240.19b–4(f)(5).

[5] Exchange Act Release No. 53104 (January 11, 2006), 71 FR 3142 (January 19, 2006) (Notice of Filing and Immediate Effectiveness of SR–ISE–2006–02).

[6] Exchange Act Release No. 53103 (January 11, 2006), 71 FR 3144 (January 19, 2006) (Notice of Filing of SR–ISE–2006–01).

[7] Exchange Act Release No. 57196 (January 24, 2008), 73 FR 5615 (January 30, 2008) (Notice of Filing and Immediate Effectiveness of SR–ISE–2008–08).

[8] The ISE anticipated that extension of the pilot might be necessary and included this in the filing for the initial pilot. *See supra* note 5, at footnote 5.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59282; File No. SR–NYSE–2008–119]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Trading Rules for the New York Block Exchange

January 22, 2009.

I. Introduction

On November 13, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Exchange Rule 1600 governing the New York Block Exchange (''NYBX''), an electronic facility for the posting and trading of undisplayed orders. The proposed rule change was published for comment in the **Federal Register** on November 24, 2008.[3] The Exchange filed Amendment No. 1 on January 22, 2009. The Commission received no comments on the proposal. This notice and order provides notice of filing of Amendment No. 1 and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Background

A. General

The NYBX facility will offer NYSE members and member organizations a means for posting and executing undisplayed orders. It is designed to facilitate trading in block-sized orders, although orders submitted to NYBX can be as small as one round lot. These orders would not be displayed to the public or NYSE members. Only NYSE-listed securities will trade in NYBX. All NYSE members and member organizations are automatically eligible to access NYBX, although they must complete a connectivity authorization process. A non-member who wishes to access the NYBX facility may do so as a ''Sponsored Participant'' pursuant to NYSE Rule 123B.

Trading in the facility will occur only when trading is occurring on the Exchange.[4] However, orders submitted to the facility will not participate in any openings, re-openings, or closings on the Exchange, or in any trades resulting from a liquidity refreshment point or a gap quote situation.[5] Trading on the facility will be halted or suspended whenever the NYSE halts or suspends trading in a particular security.[6]

In a separate action today, the Commission is also approving a proposed rule change by NYSE relating to the corporate governance of the NYBX facility.[7]

B. Order Entry and Order Parameters

Users may transmit orders to NYBX by means of an electronic interface. The facility can be accessed through an electronic FIX application or an Internet-based, password-protected order-entry application. Orders can be entered, canceled, and replaced from 3:30 a.m. ET until the close of the regular hours of the Exchange on any day that the Exchange is open for business. The facility will support a variety of order types—including limit, midpoint, and pegging orders—but not market orders.[8] An order may be pegged, for example, to the national best bid or best offer (''NBBO'') or to the NBBO plus or minus the Exchange's minimum price variation.[9] The facility will accept day orders, which expire at the end of the regular trading session on the day of entry, and ''Good til a Specified Time'' orders, which are available for execution until a specified time. Unless otherwise specified, the facility will treat all incoming orders as day orders.

For an order priced equal to or greater than $1.00, the minimum quoting increment in the facility is one penny ($0.01).[10] For an order priced less than $1.00, the minimum quoting increment is one-tenth of a penny ($0.001).[11] When there is an odd-increment spread, a midpoint execution on the facility will occur in a smaller increment ($*x.xx*5 if above $1.00, $0.*xxx*5 if below $1.00).[12] The facility will reject any pegging order priced below $1.00.[13]

The facility will accept orders with round lots and partial round lots.[14] Orders that are initially submitted with an odd-lot size would be rejected. However, if the execution of an NYBX order results in an odd-lot remainder, that remainder would not be canceled and would continue to be processed by the facility.

Orders submitted to the NYBX facility may include a ''Minimum Trading Volume'' (''MTV'') parameter, which is designed to prevent an execution unless the resulting fill would be of at least the designated size.[15] The facility would not initiate the execution of an order unless the MTV is met at the time the order is evaluated for execution. If no MTV is designated, an order would be treated as if the MTV is zero. The facility would act upon market information available to it at the time an order is entered into the facility, taking a ''snapshot'' of the market. Contraside orders resting in the Display Book (whether displayed or non-displayed) and contraside orders in the facility would automatically be considered for MTV purposes. In addition, the system default would be to include protected quotations of automated trading centers for MTV purposes, although an MTV could not be met solely by protected bids or offers. A user could elect to have protected bids and offers of automated trading centers excluded for MTV purposes. Therefore, if an NYBX order is marketable against a protected bid or offer displayed by an away market but not against any order in the facility or on the Display Book, the facility would not route the order to the away market to seek an execution (even if the NYBX order's MTV were met by the size of the protected bid or offer). Regardless of an order's MTV designation, the facility would always route to away markets as necessary to comply with Rule 611 of Regulation NMS.[16] The facility would not consider for MTV purposes any marketable interest on an away market that is priced inferior to that market's protected quotation.

The MTV designation does not guarantee that a user would receive the full size of the MTV from any resulting execution(s). For example, when the MTV of an NYBX order is met, the facility might route parts of that order to the Display Book or to one or more away markets for execution. Those contraside

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 58969 (November 24, 2008), 73 FR 71050 (''Notice'').

[4] NYSE's regular trading hours are 9:30 a.m. Eastern Time (''ET'') to 4 p.m. ET. If the Exchange closes for business at a time other than 4:00 p.m., NYBX will close at the same time. *See* proposed NYSE Rule 1600(a)(2).

[5] *See* e-mail from Bob Hill, Senior Vice President, NYSE Euronext, to Michael Gaw, Assistant Director, Division of Trading and Markets, Commission (January 21, 2009).

[6] *See* proposed NYSE Rule 1600(g)(1).

[7] *See* Securities Exchange Act Release No. 59281 (January 22, 2009) (SR–NYSE–2008–120).

[8] *See* proposed NYSE Rules 1600(c)(2) and 1600(c)(3)(A).

[9] *See* NYSE Rule 62 (describing the minimum price variation).

[10] *See* proposed NYSE Rule 1600(d)(2)(A).

[11] *See* proposed NYSE Rule 1600(d)(2)(B).

[12] *See* proposed NYSE Rule 1600(d)(3)–(4).

[13] *See* proposed NYSE Rule 1600(d)(2)(C).

[14] *See* proposed NYSE Rule 1600(c)(4).

[15] *See* proposed NYSE Rules 1600(b)(2)(E) and 1600(c)(3)(B)(ii).

[16] 17 CFR 242.611.

orders might be executed or canceled before the NYBX order can access them.

C. Priority, Execution, and Relationship to the Display Book

All orders entered into the NYBX facility are prioritized in order of price, then time.[17] In addition, execution is conditioned on all applicable MTVs being met.

The NYBX facility and the Display Book, the Exchange's principal facility for the trading of equity securities, are separate electronic systems. When it receives an order, the NYBX facility will check for contraside interest on the facility, the Display Book (both displayed and undisplayed orders), and away markets to ascertain whether to attempt to execute the order.[18] Where an NYBX order is marketable against eligible contraside liquidity and its MTV is met, the facility will attempt to execute that order against the eligible contraside liquidity at the order's limit price or better. If there is eligible contraside liquidity in the facility at a better price than any liquidity on the Display Book, the order will attempt to execute in the facility until it is exhausted, expired, or canceled back to the user pursuant to its time-in-force conditions, or until that contraside liquidity in the facility is exhausted.[19] If eligible contraside liquidity is available on the Display Book, an order would be sent to the Display Book to attempt to execute against that liquidity. NYBX orders that are routed to the Display Book will be prioritized and executed pursuant to NYSE Rule 72.

In all cases, the facility would not effect an execution except as permitted by Rule 611 of Regulation NMS. Thus, if the execution of an NYBX order would trade through a protected bid or offer of an automated trading center, the facility would route the applicable size of the order to the automated trading center to attempt to execute against that protected bid or offer.

If an order submitted to the facility cannot immediately be executed, it would remain on the NYBX book pursuant to its time-in-force conditions. As new orders are submitted to the facility or the Display Book, or the NBBO changes, the NYBX facility will re-evaluate whether the booked order is marketable and whether any applicable MTV is met. If so, the facility would attempt to execute the order, routing parts of the order to the Display Book or to away markets as necessary.

Orders in the Display Book, whether displayed or undisplayed, have priority over orders in the facility at the same price. Therefore, no trade could take place in the facility until all equal- or better-priced orders in the Display Book had been executed (or canceled), subject to any applicable MTV being met. Although, as noted above, the NYBX facility will monitor orders resting in the Display Book and route orders to the Display Book as appropriate, the Display Book will not monitor the undisplayed orders resting in the NYBX facility. Thus, marketable orders entered into the Display Book would execute without regard to any undisplayed orders that may be resting in the NYBX facility. In effect, submitting an order to the NYBX facility is equivalent to submitting an undisplayed order to the Exchange with the conditions that it not execute against any market or marketable limit orders submitted to the Display Book, and that it not execute unless any applicable MTV is met.[20]

Where an NYBX order executes in part but is not exhausted, the unfilled portion of the order (the ''residual order'') would be held in the facility where it would attempt to execute against later-submitted eligible contraside liquidity until the residual order is exhausted, expired, or canceled.[21] If the residual order is larger than the original MTV of the order, the original MTV would remain on the order. If the residual order is smaller than the original MTV, the facility would modify the MTV to equal the size of the residual order. A residual order maintains its original time stamp unless it is modified. If a user modifies the price, size, side, MTV, or time-in-force condition of a residual order, it would be considered a newly submitted order and receive a new time stamp.[22]

D. Clearance and Settlement

Details of each trade occurring in the facility will be automatically compared and matched by the Exchange, and locked-in trades will be submitted to the National Securities Clearing Corporation (''NSCC'') for clearance and settlement.[23] NYBX transaction reports will not reveal contraparty and clearing firm identities, except under the following circumstances: (1) for regulatory purposes or to comply with an order of a court or arbitrator; and (2) if NSCC will not act on behalf of a member or its clearing firm.[24] The trade reports that NSCC will receive from the facility will contain the identities of the parties to the trade—thus enabling NSCC to conduct its risk management functions and settle trades between the appropriate parties—but will contain an indicator noting that the trade is anonymous. On the contract sheets that NSCC issues to its participants, NSCC will substitute ''ANON'' for the acronym of each counterparty.

E. Recordkeeping

Users of the facility will be required to comply with all relevant rules of the Exchange and Commission in relation to reports and records of transactions.[25] Such rules include, but are not limited to, NYSE Rules 132B (Order Tracking Requirements), 342 (Supervision), and 440 (Books and Records), and Section 17 of the Exchange Act[26] and Rules 17a–3, 17a–4, and 17a–6 thereunder.[27] The Exchange will retain the identity of each user that executes an anonymous transaction on the facility, thus enabling the user to satisfy its recordkeeping obligations under Exchange Act Rules 17a–3(a)(1) and 17a–4(a).[28]

F. Limitations on the Use of the Facility

Designated Market Maker (''DMMs'') and Registered Competitive Market Makers (''RCMMs'') on the floor of the Exchange may not submit orders to the NYBX facility.[29] The off-floor unit of a DMM or RMM may submit orders to the facility if it has policies and procedures that are designed to prohibit inappropriate sharing of information

[17] *See* proposed NYSE Rule 1600(d)(1)(A).

[18] The facility would route orders to the Display Book or to away markets as necessary via the NYSE Routing Broker. *See* NYSE Rule 17(b) (describing operation of the Routing Broker).

[19] If the prices of two NYBX orders are crossed, the execution will occur at the price of the order that is nearest to or at the midpoint of the NBBO. *See* proposed NYSE Rule 1600(d)(1)(C)(vi).

[20] In addition, as noted above, NYBX orders will not participate in any openings, closings, or re-openings, or in any trades resulting from a liquidity refreshment point or a gap quote situation. NYSE has represented that it will disclose to users of the NYBX facility the implied conditions of NYBX orders. *See* Amendment No. 1.

[21] *See* proposed NYSE Rules 1600(d)(1)(C) and 1600(d)(1)(D).

[22] Similarly, a pegging order that is repriced with a change in the NBBO also would lose its original priority and go behind previously submitted orders in the NYBX queue at the new price. *See* proposed NYSE Rule 1600(d)(1)(A)(ii).

[23] *See* proposed NYSE Rule 1600(e)(1). NYBX executions will be compared through the Regional Interface Organization Online process (''RIO Online''). RIO Online is NYSE Arca's internal processing interface that sends order execution information to DTCC. RIO Online gathers the trades that are executed on any given day, places the trades into the appropriate message format and sends them to DTCC. RIO Online provides a record of all trades that were sent to DTCC. RIO Online is also used to manage any approved trade corrections.

[24] *See* proposed NYSE Rule 1600(e)(2)–(3).

[25] *See* proposed NYSE Rule 1600(i).

[26] *See* 15 U.S.C. 78q.

[27] 17 CFR 240.17a–3, 240.17a–4, and 240.17a–6.

[28] 17 CFR 240.17a–3(a)(1) and 240.17a–4(a).

[29] *See* proposed NYSE Rule 1600(h).

between the floor personnel and the off-floor personnel.[30]

In addition, NYSE has proposed certain restrictions on entering orders into the facility designed to promote compliance with Section 11(a) of the Exchange Act.[31] A member may not enter an order into the facility from the floor of the Exchange when such order is for its own account, the account of an associated person, or an account over which it or an associated person exercises investment discretion.[32] Also, a member on the floor may not have an order entered into the facility by sending it to an off-floor facility for entry. However, a member may submit a proprietary or customer order to the facility from off the floor of the Exchange.

G. NYBX-Only Trades

A trade that results from the execution of two NYBX orders (an ''NYBX-Only Trade'') will print with a special modifier (''N.X'') to identify it as occurring outside the Display Book.[33] The same ''N.X'' modifier is also used to identify executions in MatchPoint, which is a separate trading facility of the Exchange that matches non-displayed orders.[34] A trade that results from an NYBX order that is routed to the Display Book and executes against one or more Display Book orders will print as a regular-way NYSE trade (''N'').

The Exchange proposes to amend certain of its rules that apply to or take account of executions on the Display Book by carving out NYBX-Only Trades from their scope. Thus, for example, a trade effected in the NYBX facility would not be deemed the ''last different round lot price'' for purposes of NYSE Rule 100, which relates to executions of odd-lot orders. NYSE believes that a DMM, who takes the contraside for all executions of odd-lot orders in its securities, could be inappropriately disadvantaged if it were required to execute at last different round lot prices that included the prices of NYBX-Only Trades. In this situation, the DMM would be bound as the contraside of odd-lot orders up to the size of the print in the NYBX facility even though it would have no knowledge of the size of the orders that made up the print. NYSE also has argued that, because a DMM has market re-entry obligations for stabilization purposes, such obligations should not apply to NYBX-Only Trades, as the DMM will have no information about orders within NYBX.

H. Amendment No. 1

In Amendment No. 1, the Exchange deleted the proposed carve-out relating to NYSE Rule 15A (Order Protection Rule). The Exchange believes that this carve-out is ''not necessary to ensure the effective operation of the NYBX Facility.'' In addition, the Exchange represented that it would publish an informational memorandum for its members describing the NYBX facility and how orders entered into NYBX will interact with orders entered into the Display Book. The memorandum will describe, among other things, the implied trading conditions of the NYBX trading platform. Finally, the Exchange in Amendment No. 1 made certain technical, non-substantive changes to the proposed rule text. The text of Amendment No. 1 is available from the Exchange's Web site (*http://www.nyx.com*), the Exchange's principal office, and the Commission's Public Reference Room.

III. Discussion

A. Generally

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act,[36] which requires a national securities exchange, among other things, to be so organized to carry out the purposes of the Exchange Act. The Commission further believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[37] which requires, among other things, that an exchange have rules designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Moreover, the Commission believes that the proposed rule change is consistent with Section 11A(a)(1)(C) of the Exchange Act,[38] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market. The ability to post undisplayed interest to the NYBX facility will provide additional opportunities for block-sized orders, in particular, to interact with both displayed interest (on the Display Book and away markets) and undisplayed interest (in the facility and the Display Book). The MTV designation permits order senders to limit information leakage and the resulting market impact. A user selecting a large MTV could choose to execute only when significant contraside interest can be identified by the NYBX facility. A user selecting a smaller MTV could choose to obtain a series of more rapid partial executions while accepting a greater risk that market participants could infer the existence of the user's order before achieving a meaningful amount of executed volume. This functionality appears reasonably designed to give brokers additional opportunities to execute investors' orders in the best market and to promote the efficient execution of securities transactions, particularly transactions of block size.

B. Relationship of NYBX Facility to the Exchange

The Commission believes that the Exchange's rules of execution priority as they relate to the interaction of orders between the NYBX facility and the Display Book, the Exchange's main trading facility, are consistent with the Exchange Act. The Commission notes, however, that the two facilities do not constitute a completely integrated liquidity pool. For example, orders submitted to the NYBX facility would not participate in any openings, closings, or re-openings on the Exchange, or in any trades resulting from a liquidity refreshment point or gap quote. Furthermore, by submitting an order to the NYBX facility rather than to the Display Book, the order sender is electing not to interact with certain marketable order flow that may be submitted to the Display Book. For example, while an order resting in the NYBX facility could interact with

[30] *See* proposed NYSE Rule 1600(h)(A).

[31] 15 U.S.C. 78k(a). Section 11(a) provides that a member of an exchange may not trade for its own account on that exchange unless an exemption applies.

[32] *See* proposed NYSE Rule 1600(h)(B).

[33] *See* proposed NYSE Rule 1600(f).

[34] *See* NYSE Rule 1500. NYBX orders will not interact with MatchPoint orders, and vice versa.

[35] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(1)

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78k–1(a)(1)(C).

resting orders in the Display Book, it could not interact with marketable orders entered into the Display Book or participate in openings, closings, re-openings, and certain other discrete events. Orders that are marketable against interest in the Display Book when they are submitted would interact only with contraside interest in the Display Book (or be routed to access one or more protected quotations).

The Commission believes that the Exchange's manner of operating the NYBX facility in relation to the Display Book is consistent with the Exchange Act. The NYBX facility appears reasonably designed to permit members' orders, particularly large ones, to interact with each other and with certain orders in the Display Book, while preserving members' ability to limit information leakage and consequent market impact with respect to such orders. The Exchange would route these orders to away markets as necessary to avoid trade-throughs of protected quotations. The Exchange also would route these orders to interact with any displayed or undisplayed interest resting in the Display Book so long as any applicable MTV is met. Although orders entered into the NYBX facility would not interact with marketable orders entered into the Display Book, participate in certain discrete NYSE trading events, or execute unless any applicable MTV is met, the Commission has previously approved the use of discretionary orders that are undisplayed and that elect to interact only with certain kinds of order flow or if certain conditions are met. The Commission concludes, therefore, that it is consistent with the Exchange Act for the Exchange to offer its members this discretion over the display and execution of orders submitted to the NYBX facility.

The Exchange also proposes to amend certain NYSE rules to exclude transactions that occur solely within the NYBX facility from the operation of the traditional NYSE market. For example, certain responsibilities of the Exchange's DMMs and RCMMs are keyed off the last sale on the Exchange. Under this proposal, an NYBX-Only Trade would not be deemed a last sale for purposes of those rules. In addition, stop orders and stop-stock provisions of the Exchange rules would not be triggered by NYSE-Only Trades. The Commission does not believe that the Exchange Act requires NYSE's rules to treat Display Book trades and NYBX-Only Trades the same for all purposes, and that excluding NYBX-Only Trades as triggering events for certain Exchange rules is broadly within the Exchange's discretion. The Commission concludes, therefore, that these exclusions for NYBX-Only Trades are consistent with the Exchange Act.

C. Trading Ahead of Customer Orders

Because orders in the NYBX facility could be executed at the midpoint of the NBBO, it is possible that an NYSE member would trade ahead of a held customer order by less than $0.01 (*i.e.*, $ 0.005). If an NYBX order executes at the midpoint of the NBBO and results in a member or member organization's trading ahead of a held customer order at the same price, NYSE Rule 92 (Limitations on Member's Trading Because of Customers' Orders) may be implicated. Rule 92(a) generally restricts a member or member organization from entering a proprietary order while in possession of a customer order. Rule 92(b) through (d) provides several exceptions to the general restrictions of Rule 92(a).[39] The Exchange has stated that all users will be expected to comply with Rule 92(a) when trading on the NYBX facility unless such trading falls within an applicable exception in NYSE Rule 92(b) through (d).

D. Section 11(a) of the Exchange Act

Section 11(a) of the Exchange Act prohibits a member of a national securities exchange from effecting a transaction on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion (each a ''Covered Account'') unless an exemption applies.[40] Rule 11a2–2(T) under the Exchange Act,[41] known as the ''effect versus execute'' rule, provides exchange members with one exemption from the Section 11(a) prohibition. To comply with Rule 11a2–2(T)'s conditions, a member: (1) Must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member has investment discretion, neither the member not its associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule. The Exchange believes that orders entered into the NYBX facility from off the floor will comply with these provisions of Rule 11a2–2(T).

Off-Floor Transmission. The requirement in Rule 11a2–2(T) for orders to be transmitted from off the exchange floor reflects Congress' intent that Section 11(a) should operate to put member money managers and non-member money managers on the same footing for purposes of their transactions for Covered Accounts. In considering other automated systems, the Commission and the staff have stated that the off-floor transmission requirement would be met if a Covered Account order is transmitted from off the floor directly to the exchange floor by electronic means.[42] Orders will be electronically entered into the NYBX facility from on and off the floor of the Exchange; however, a member is not permitted to enter an order into the NYBX facility from the floor of the Exchange when such order is for a Covered Account.[43] Similarly, a

[39] *See* NYSE Information Memo 2001–33 (October 8, 2001); Securities Exchange Act Release No. 44139 (March 30, 2001), 66 FR 18339 (April 6, 2001) (SR–NYSE–94–34).

[40] 15 U.S.C. 78k(a).

[41] 17 CFR 240.11a2–2(T).

[42] *See* Securities Exchange Act Release No. 57058 (December 28, 2007), 73 FR 903 (January 4, 2008) (approving MatchPoint) (''MatchPoint Order'') at 908, note 54. *See* Securities Exchange Act Release Nos. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (order approving proposed rule change of the American Stock Exchange (''Amex'') to establish new hybrid market); 29237 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979) (''1979 Release''), 44 FR 6084 (January 31, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System, and the Phlx's Automated Communications and Execution System). *See also* letter from Paula R. Jensen, Deputy Chief Counsel, Division of Market Regulation, Commission, to Angelo Evangelou, Senior Attorney, Chicago Board Options Exchange, (''CBOE''), (March 31, 2003) (regarding CBOE*direct* system); letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Jeffrey P. Burns, Assistant General Counsel, Amex (July 9, 2002) (regarding Amex's auto-ex system for options); letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Richard S. Rudolph, Counsel, Philadelphia Stock Exchange (''Phlx'') (April 15, 2002) (regarding Phlx's AUTOM System and its automatic execution feature AUTO–X); letter from Paula R. Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Kathryn L. Beck, Senior Vice President, Special Counsel and Antitrust Compliance Officer, Pacific Exchange (October 25, 2001) (regarding Archipelago Exchange); letter from Brandon Becker, Director, Division of Market Regulation, Commission, to George T. Simon, Foley & Lardner (November 30, 1994) (regarding Chicago Match).

[43] *See* Notice, *supra* note 3, 73 FR at 71061. The Commission notes that proposed NYSE Rule 1600(h) (Limitations on the Use of the New York Block Exchange) will prohibit a member from entering an order into the NYBX facility from the floor of the Exchange when such order is for a Covered Account. Further, the rule also prohibits a member from having such order entered into the facility by sending it to an off-floor facility for entry. A member with authorized access to the facility may enter only customer orders into the NYBX facility from the floor of the Exchange.

member on the floor may not enter into the facility an order sent to it by an affiliated member from off the floor, if the order is for such affiliated member's own account, an account of an associated person, or an account over which it or an associated person exercises investment discretion. Consequently, the Commission believes orders transmitted for execution on the NYBX facility satisfy the off-floor transmission requirement.

Non-Participation in Order Execution. Rule 11a2–2(T) further provides that a member and its associated persons may not participate in the execution of an order once it has been transmitted to the exchange floor.[44] This requirement was included to prevent members with their own brokers on the exchange floor from using those persons to influence or guide their orders' execution. This requirement does not preclude a member from canceling or modifying an order, or from modifying the instructions for executing the order after it has been transmitted to the floor. However, such cancellations or modifications must be transmitted from off the exchange floor.[45]

The Commission has stated that the non-participation requirement is satisfied by an automated system when the member's use of such a system entails relinquishing the ability to influence or guide the execution of a Covered Account order once transmitted into the system.[46] Once an order is entered into the NYBX facility, a member may not participate in, guide, or influence the execution of such order. NYBX orders are sent by electronic means directly into the NYBX facility. A user may enter and cancel an NYBX order any time during the regular trading day of the Exchange. NYSE has represented that matching, trading, and routing of orders are effectuated through an algorithm, which does not permit a user to affect the order or its execution in any way; thus, the member relinquishes all control of an NYBX order when trading commences. The Commission believes that, because a member relinquishes control of an order upon transmission to the facility and will not be able to influence or guide the execution of that order, the non-participation requirement is met with respect to orders that are executed automatically in the facility.

Execution through Unaffiliated Member. Although Rule 11a2–2(T) contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission has recognized that the requirement is not applicable when an automated exchange system is used, if the execution of the order is automatic once it has been transmitted into the system, and if the design of the system ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the system.[47] The Commission has stated that, in such instances, executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T).[48] NYBX orders are sent by electronic means to the NYBX facility. The Exchange has represented that the design of the NYBX facility ensures that members do not posses any special or unique trading advantages in the handling of the orders.

Non-Retention of Compensation. The Commission notes that members that intend to rely on Rule 11a2–2(T) in connection with orders submitted to the NYBX facility must comply with the requirements of paragraph (a)(2)(iv) of that rule.

In reliance on NYSE's representations and for the reasons set forth above, the Commission believes that members entering orders into the NYBX facility would satisfy the requirements of Rule 11a2–2(T) under the Exchange Act.

E. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[49] for approving the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publication of notice of filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange proposes to delete the carve-out relating to NYSE Rule 15A (Order Protection Rule). The Exchange has stated that this carve-out is ''not necessary to ensure the effective operation of the NYBX Facility,'' and elimination of the proposed change to Rule 15A clarifies that the operation of the NYBX facility would not affect the Exchange's obligation to comply with Rule 611 of the Exchange Act. The Exchange also represented that it would disclose to NYBX users the implied conditions on NYBX orders. The other changes made by Amendment No. 1 are technical corrections to the proposed rule text. The rest of the proposed rule text, which has been subject to a full comment period, is unaffected. The Commission believes, therefore, that good cause exists to approve the proposed rule change, as amended, on an accelerated basis.

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–2008–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–119. This file number should be included on the

[44] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (approving ArcaEx as the equities trading facility of PCX Equities). *See also* MatchPoint Order, *supra* note 42, 73 FR at 908 note 56 and accompanying text.

[45] *See* MatchPoint Order, *supra* note 42, 73 FR at 908. *See also* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978); *see also* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq Stock Market LLC's registration as a national securities exchange) (''Nasdaq Exchange Order'').

[46] *See* 1979 Release, *supra* note 42; *see also, e.g.*, Securities Exchange Act Release Nos. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (order approving proposed rule change of CBOE to establish a screen based trading system for non-option securities); 51666 (May 9, 2005), 70 FR 25631, 25633 (May 13, 2005) (order approving proposed rule change by International Securities Exchange to establish facilitation, block order, and solicited order mechanisms).

[47] In considering the operation of an automated execution system operated by an exchange, the Commission has noted that, while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. The Commission has stated that, because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, supra note 42; *see also* MatchPoint Order *supra* note 42, 73 FR at 908, note 59 and accompanying text; Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange).

[48] *See* 1979 Release, *supra* note 42; *see also e.g.*, MatchPoint Order, *supra* note 42; Securities Exchange Act Release No. 54238 (July 28, 2005), 71 FR 44758 (August 7, 2006) (order approving proposed rule change of NYSE Arca to establish the OX trading platform); Nasdaq Exchange Order, *supra* note 45.

[49] 15 U.S.C. 78s(b)(2).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–119 and should be submitted on or before February 18, 2009.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[50] that the proposed rule change (SR–NYSE–2008–119), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1805 Filed 1–27–09; 8:45 am]

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[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59281; File No. SR–NYSE–2008–120]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Limited Liability Company Agreement of New York Block Exchange, a Facility of NYSE

January 22, 2009.

I. Introduction

On November 14, 2008, the New York Stock Exchange, LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] in connection with the formation of a joint venture between NYSE and BIDS Holdings L.P. (''BIDS''), a Delaware limited partnership, to establish a new electronic trading facility of the Exchange, the New York Block Exchange (''NYBX''). The proposed rule change was published for comment in the **Federal Register** on November 24, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Overview

NYSE proposes to establish NYBX as a facility[4] of the Exchange. NYBX would provide for electronic matching and execution of non-displayed orders with the aggregate of all displayed and non-displayed orders residing within NYBX and the NYSE Display Book. The Exchange represents that NYBX would consider protected quotations of all automated trading centers.[5] Only securities listed on NYSE would be eligible to trade on NYBX.

NYBX would be owned and operated by the New York Block Exchange LLC (''Company''), a Delaware limited liability company (''LLC''). With this proposed rule change, the Exchange seeks the Commission's approval of the proposed governance structure of the Company as reflected in the Limited Liability Company Agreement (''LLC Agreement''). In a separate action today, the Commission approved the Exchange's proposed rule change to establish the trading rules for NYBX.[6]

NYSE and BIDS each would own a 50% economic interest (''Interest'')[7] in the Company. In addition to its Interest, NYSE would enter into an agreement with the Company (''Services Agreement'') pursuant to which NYSE would perform certain financial, operational, information technology, and development services for the Company.[8] As a self-regulatory organization (''SRO''), NYSE has regulatory responsibility for all of its facilities, including NYBX. The Exchange has delegated certain of its self-regulatory responsibilities to its wholly owned subsidiary, NYSE Regulation, Inc. (''NYSE Regulation''), which performs the regulatory functions of NYSE pursuant to a delegation agreement. In the LLC Agreement, the Members acknowledge and agree that NYSE Regulation would carry out certain regulatory oversight of NYBX.[9]

The board of directors of the Company (''Board of Directors'') would manage the business and affairs of the Company[10] but would delegate the day-to-day operations of the Company and the development of NYBX to the Exchange pursuant to the Services Agreement.[11] The Board of Directors would consist of two individuals designated by NYSE (''NYSE Directors'') and two individuals designated by BIDS (''BIDS Directors'').[12] The Members would not otherwise participate in the management or control of the Company's business.[13]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58970 (November 17, 2007), 73 FR 71062 (November 24, 2008) (''Notice'').

[4] Pursuant to Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2), the term ''facility'' when used with respect to an exchange, includes ''its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.''

[5] *See* Notice, supra *note* 3, 73 FR at 71062. The terms ''protected quotations'' and ''automated trading centers'' will have the same meanings as defined in Rule 600 of Regulation NMS, 17 CFR 242.600.

[6] *See* Securities Exchange Act Release No. 59282 (SR–NYSE–2008–119).

[7] ''Interest'' means the ownership interest in the Company, including its interest in the capital, profits, losses, and distributions of the Company. *See* Section 2.1 of the LLC Agreement. A person that holds an economic interest in an LLC generally must become party to the LLC Agreement and is referred to as a ''Member.'' *See id.*

[8] *See* Notice, supra *note* 3, 73 FR at 71062.

[9] *See* Section 8.1(c) of the LLC Agreement.

[10] *See* Sections 8.1(a) and 8.3 of the LLC Agreement.

[11] *See* Section 8.1(b) of the LLC Agreement.

[12] *See* Section 8.3(a) of the LLC Agreement.

[13] *See* Section 7.1(a) of the LLC Agreement.

III. Discussion and Commission Findings

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.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[15] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

A. NYBX as a Facility of the Exchange

The Commission believes that the proposed rule change is consistent with Section 6(b)(1) of the Act in that, upon establishing NYBX as a facility of the Exchange, NYSE would remain so organized and have the capacity to carry out the purposes of the Act. As an SRO, the Exchange would have regulatory control over NYBX and would be responsible for ensuring its compliance with the federal securities laws and all applicable rules and regulations thereunder. Furthermore, the Company is obligated under the LLC Agreement to operate NYBX in a manner consistent with the regulatory and oversight responsibilities of NYSE and the Act and rules and regulations thereunder. The Commission notes that it previously approved similar structures with respect to the operation of exchange facilities.[17]

Although the Company does not carry out any regulatory functions, all of its activities must be consistent with the Act. As a facility of a national securities exchange, NYBX is not solely a commercial enterprise but is an integral part of an SRO that is registered pursuant to the Act and therefore subject to obligations imposed by the Act. The Commission believes that the LLC Agreement is reasonably designed to enable the Company to operate in a manner that is consistent with this principle. The LLC Agreement provides that the Company, its Members, and the officers, directors, agents, and employees of the Company and its Members shall comply with the federal securities laws and the rules and regulations promulgated thereunder and cooperate with the Exchange and the Commission.[18] Further, the Company, its Members, and the officers, directors, agents, and employees of the Company and its Members also agree to engage in conduct that fosters and does not interfere with the Company's and the Exchange's ability to carry out their respective responsibilities under the Act.[19]

The LLC Agreement likewise provides that the Board of Directors collectively and each member of the Board of Directors individually must comply with the federal securities laws and the rules and regulations thereunder and cooperate with the Exchange and with the Commission.[20] Moreover, each NYSE Director and BIDS Director must take into consideration whether his or her actions would cause NYBX or the Company to engage in conduct that fosters, and does not interfere with, the Exchange's or the Company's ability to carry out their respective responsibilities under the Act.[21]

The LLC Agreement stipulates that all confidential information pertaining to the self-regulatory function of the Exchange or the Company (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of the Company would not be made available to any persons other than to those officers, directors, employees, and agents of the Company and the Members that have a reasonable need to know the contents thereof; would be retained in confidence by the Company and the Members and their respective officers, directors, employees, and agents; and would not be used for any commercial purposes.[22] Nothing in the LLC Agreement, however, would limit or impede the rights of the Commission, the Exchange, or NYSE Regulation to access and examine confidential information of the Company pursuant to the federal securities laws or limit or impede the ability of a member of the Board of Directors, any Member, or any officer, director, agent, or employee of a Member or the Company to disclose confidential information to the Commission, the Exchange, or NYSE Regulation.[23]

The LLC Agreement also provides that NYSE Regulation will receive notice of planned or proposed changes to the Company (excluding Non-Market Matters [24]) or NYBX, and NYSE Regulation must not object affirmatively to such changes prior to implementation.[25] If NYSE Regulation determines that the planned or proposed changes to the Company or NYBX could cause the Company or NYBX to operate in a manner that is not consistent with the provisions of the LLC Agreement, the rules of the Exchange, or the federal securities laws governing NYBX or NYSE Market Participants,[26] or that otherwise impedes the Exchange's ability to regulate NYBX or NYSE Market Participants, or to fulfill its obligations under the Act as an SRO (each a ''Regulatory Deficiency'' [27]), NYSE Regulation may direct the Company to, and the Company must, modify the

[14] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(1).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release Nos. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (order approving CBOE Stock Exchange as a facility of the Chicago Board Options Exchange) (''CBSX Order''); 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (order approving the ISE Stock Exchange as a facility of the International Securities Exchange) (''ISE Stock Order''); 54364 (August 25, 2006), 71 FR 52185 (order approving the Boston Equities Exchange as a facility of the Boston Stock Exchange) (''BeX Order''); and 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (order approving the Boston Options Exchange as a facility of the Boston Stock Exchange) (''BOX Order'').

[18] *See* Section 6.1(c) of the LLC Agreement.

[19] *See id.*

[20] *See* Sections 8.1(a) and (d) of the LLC Agreement.

[21] *See* Section 8.1(d) of the LLC Agreement.

[22] *See* Section 14.1(b) of the LLC Agreement.

[23] *See* Section 14.1(c) of the LLC Agreement.

[24] ''Non-Market Matters'' means matters relating solely to one or more of the following: marketing, administrative matters, personnel matters, social or team-building events, meetings of Members, communication with Members, finance, location and timing of Board of Directors meetings, market research, real property, equipment, furnishings, personal property, intellectual property, insurance, contracts unrelated to the operation of NYBX, and *de minimis* items. *See* Section 2.1 of the LLC Agreement.

[25] *See* Section 8.1(e) of the LLC Agreement.

[26] ''NYSE Market Participant'' means any person that is registered with the Exchange for purposes of participating in equities trading on one or more of the U.S. markets operated by NYSE Euronext, the parent company of NYSE. *See* Section 2.1 of the LLC Agreement.

[27] *See* Section 2.1 of the LLC Agreement (defining ''Regulatory Deficiency'').

planned or proposed changes as necessary to ensure that they do not cause a Regulatory Deficiency.[28] Likewise, if NYSE Regulation determines that a Regulatory Deficiency exists or is planned, NYSE Regulation may direct the Company to, and the Company must, undertake such modifications to the Company (excluding Non-Market Matters) or NYBX as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow NYSE Regulation to perform and fulfill its delegated regulatory responsibilities.[29]

Furthermore, before any amendment to or repeal of any provision of the LLC Agreement becomes effective, such amendment or repeal must be filed with, or filed with and approved by, the Commission under Section 19 of the Act.[30] In the alternative, an amendment or repeal must be submitted to the board of directors of the Exchange and, if the Exchange's board of directors determines that such amendment or repeal must be filed with, or filed with and approved by, the Commission before it can be effectuated, then such amendment or repeal would not be effectuated until filed with, or filed with and approved by, the Commission.[31]

The Commission believes that certain additional provisions in the LLC Agreement that make accommodation for NYSE as the SRO for NYBX are consistent with the Act, because they enhance the ability of NYSE to carry out its self-regulatory responsibilities with respect to NYBX. The LLC Agreement provides that the Board of Directors, by a majority vote, may suspend or terminate a Member's voting privileges or membership if the Member materially violates a provision of the LLC Agreement relating to certain regulatory matters [32] or any federal or state securities law; such Member is subject to statutory disqualification; [33] or such action is necessary or appropriate in the public interest or for the protection of investors.[34] The directors designated by the Member subject to sanction would be excluded from any vote to suspend or terminate such Member.[35] Moreover, in the event of a meeting of the Board of Directors solely with respect to the business of suspending or terminating a Member's voting privileges or membership, the presence of directors designated by the Member subject to sanction would not be required to constitute a quorum to transact the business.[36]

To reflect that NYBX is not solely a commercial enterprise, the LLC Agreement also stipulates that any individual designated to the Board of Directors may not be subject to any applicable statutory disqualification.[37] Further, any director who becomes subject to a statutory disqualification would be deemed to have automatically resigned from the Board of Directors.[38]

B. Regulatory Jurisdiction Over the Company and Its Members

The Commission also believes that the terms of the LLC Agreement provide clarification of the Commission's and NYSE's regulatory jurisdiction over the Company and its Members. The LLC Agreement provides that, to the extent related to the Company's business, the books, records, premises, officers, directors, agents, and employees of the Company and its Members would be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act.[39] The LLC Agreement also provides that the books and records of the Company must be maintained at the principal office of the Company in New York and would be subject at all times to inspection and copying by the Commission and the Exchange at no additional charge to the Commission or the Exchange.[40]

The LLC Agreement further provides that the Company, its Members, and the officers, directors, agents, and employees of the Company and its Members irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and the Exchange for purposes of any suit, action, or proceeding pursuant to U.S. federal securities laws and the rules and regulations thereunder arising out of, or relating to, activities of the Company and 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 Commission; the suit, action, or proceeding is an inconvenient forum; the venue of the suit, action, or proceeding is improper; or that the subject matter may not be enforced in or by such courts or agency.[41] Moreover, the Company and each Member must take such action as is necessary to ensure that the Company's and such Member's officers, directors, agents, and employees consent in writing to the application to them of the provisions in the LLC Agreement with respect to their activities relating to the Company.[42]

The Commission believes that these provisions are consistent with the Act because they are reasonably designed to facilitate the Commission's and NYSE's regulatory jurisdiction over the Company and NYBX. These provisions clarify the Commission's authority under the Act to inspect the Company's books and records by deeming them to be the books and records of a national securities exchange. Further, these provisions clarify that the Commission may exercise its authority under Section 19(h)(4) of the Act [43] with respect to the officers and directors of the Company and its Members, because such officers and directors are deemed to be officers and directors of the Exchange. Finally, the LLC Agreement clarifies that, to the extent that they are related to the Company's business, the books and records of the Company are subject to the Commission's examination authority under Section 17(b)(1) of the Act.[44]

Even in the absence of these provisions, Section 20(a) of the Act [45] provides that any person with a controlling interest in the Company would be jointly and severally liable with and to the same extent that the Company is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. Moreover, NYSE is required to enforce compliance with these provisions, because they are ''rules of the exchange'' within the meaning of Section 3(a)(27) of the Act.[46] A failure on the part of NYSE to enforce its rules

[28] *See* Section 8.1(e) of the LLC Agreement.

[29] *See id.*

[30] *See* Section 13.1 of the LLC Agreement.

[31] *See id.*

[32] *See* Section 7.1(b) of the LLC Agreement (enumerating the sections of the LLC Agreement for which violations thereof by a Member would permit the Board of Directors to suspend or terminate the Member's voting privileges).

[33] *See* Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39) (defining ''statutory disqualification'').

[34] *See* Section 7.1(b) of the LLC Agreement.

[35] *See id.*

[36] *See* Section 8.3(f) of the LLC Agreement.

[37] *See* Section 8.3(a) of the LLC Agreement.

[38] *See* Section 8.3(b) of the LLC Agreement.

[39] *See* Section 6.1(a) of the LLC Agreement.

[40] *See id.*

[41] *See* Section 6.1(b) of the LLC Agreement.

[42] *See* Section 8.1(d) of the LLC Agreement.

[43] 15 U.S.C. 78s(h)(4) (authorizing the Commission, by order, to remove from office or censure any officer or director of a national securities exchange if it finds, after notice and an opportunity for hearing, that such officer or director has: (1) willfully violated any provision of the Act or the rules and regulations thereunder, or the rules of a national securities exchange; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the national securities exchange).

[44] 15 U.S.C. 78q(b)(1).

[45] 15 U.S.C. 78t(a).

[46] 15 U.S.C. 78c(a)(27).

could result in suspension or revocation of its registration, pursuant to Section 19(h)(1) of the Act.[47]

C. Changes of Ownership Interests in the Company

The Commission believes that the provisions in the LLC Agreement relating to changes of Interests in, and changes in control of, the Company are consistent with the Act. The LLC Agreement provides that NYSE's Interest would not decline below 50% unless and until NYSE had delivered to the Board of Directors a notice in writing of its intention to Transfer[48] its Interest such that the Exchange, either alone or together with its Related Persons,[49] would hold less than a 50% Interest in the Company.[50] Furthermore, before the Exchange could reduce its Interest to less than 50%, the Exchange must first file a proposed rule change with the Commission under Section 19(b) of the Act and obtain the Commission's approval of that proposal.[51] NYSE's regulatory obligations for NYBX would endure as long as NYBX is a facility of the Exchange, regardless of the size of NYSE's Interest in the Company.[52] Nevertheless, the Commission believes that it is reasonable for the Exchange to alert the Commission of any reduction in its Interest in the Company. Such a reduction could warrant additional review of the LLC Agreement to ensure that NYSE's responsibilities as the SRO for NYBX are not compromised.

The LLC Agreement also provides that no person that is not a Member as of the effective date of the LLC Agreement, either alone or together with its Related Persons, may directly own an Interest in the Company exceeding 20% (''Concentration Limitation'').[53] The Concentration Limitation, however, would not apply to the Exchange.[54] Further, the LLC Agreement permits the Concentration Limitation to be waived if the Board of Directors determines not to oppose the acquisition of an Interest exceeding the Concentration Limitation and the waiver has been filed as a proposed rule change under Section 19(b) of the Act and approved by the Commission.[55] Nevertheless, the Board of Directors may not waive the Concentration Limitation if the person or any of its Related Persons seeking to exceed the Concentration Limitation is subject to any applicable statutory disqualification or is a member or member organization of the Exchange.[56]

Moreover, the LLC Agreement provides that, if any person, alone or together with any Related Person, acquires a direct or indirect ownership of 25% or more of the total voting power of a Member (such person, a ''Controlling Person,'' and such interest a ''Controlling Interest''[57]), and the Member, alone or together with any Related Person, holds an Interest in the Company equal to or greater than 20%, then such Controlling Person must become a party to the LLC Agreement and abide by its terms.[58] The LLC Agreement also provides that the Exchange must file with the Commission, pursuant to Section 19(b) of the Act, any amendment to the LLC Agreement caused by the addition of a Controlling Person.[59] The non-economic rights and privileges, including all voting rights, of the Member in which such Controlling Interest is acquired would be suspended until the proposed rule change has become effective under the Act or until the Controlling Person ceased to have a Controlling Interest in such Member.[60]

A proposed rule change submitted in any of the circumstances noted above would afford the Commission an opportunity to ensure that a change to the LLC Agreement or a change in the ownership of the Company would be consistent with the Act, including whether the Commission and NYSE would retain sufficient regulatory jurisdiction over the proposed indirect controlling party. The Commission understands that the LLC Agreement would apply to any ultimate parent of the Company, no matter how many levels of ownership are involved, provided that a Controlling Interest exists between each link of the ownership chain.

Finally, the LLC Agreement requires the Company to provide the Commission with written notice ten days prior to the closing date of any acquisition of an Interest by a person that results in a Member's percentage ownership interest in the Company, alone or together with any Related Person of such Member, meeting or crossing the 5%, 10%, or 15% thresholds.[61] This notice requirement is analogous to a requirement in Form 1,[62] the application and amendments to the application for registration as a national securities exchange. Exhibit K of Form 1 requires any exchange that is a corporation or partnership to list any persons that have an ownership interest of 5% or more in the exchange.[63] Additionally, Rule 6a–2(a)(2) under the Act[64] requires an exchange to update its Form 1 within ten days after any action that renders inaccurate the information previously filed in Exhibit K.

Exhibit K imposes no obligation on an exchange to report parties whose ownership interest in the exchange is less than 5%. Likewise, the Commission does not believe that a change to the LLC Agreement that reflects the taking of less than a 5% interest in a facility of a national securities exchange (or an increase that does not cross any of the additional thresholds) is a ''rule of the exchange'' that must be filed pursuant to Section 19(b) of the Act.

D. Ownership Interest of BIDS

Under this proposal, BIDS would hold a 50% Interest in the Company, the operator of NYBX. The Commission has previously expressed concern regarding the potential for unfair competition and conflicts of interest where a member of an exchange owns more than 20% of

[47] 15 U.S.C. 78s(h)(1).

[48] *See* Section 9.1 of the LLC Agreement (defining ''Transfer'').

[49] ''Related Person'' means, with respect to any person, any other person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such person. *See id.* ''Control'' means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through ownership or voting of securities, by contract or otherwise. *See id.*

[50] *See* Section 9.8(c) of the LLC Agreement.

[51] *See id.*

[52] *See* Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (order approving the transfer of the Boston Stock Exchange's ownership interest in the Boston Options Exchange Group, the operator of the BOX facility, to MX U.S. 2, Inc., a wholly owned subsidiary of the Montreal Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving the establishment of Archipelago Exchange as a facility of the Pacific Exchange where Pacific Exchange's ownership interest in Archipelago Exchange, L.L.C. (''Arca L.L.C.''), the operator of Archipelago Exchange, consisted solely of a 10% interest in Archipelago Holdings, LLC, the parent company of Arca L.L.C.); 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999) (order approving electronic system operated as a facility of Philadelphia Stock Exchange (''Phlx''), which had no ownership interest in the operation of the system); and 54538 (September 29, 2006), 71 FR 59184 (October 6, 2006) (order approving Phlx's New Equity Trading system and operation of optional outbound router as a facility of Phlx, which had no ownership interest in the third-party operator).

[53] *See* Section 9.8(b) of the LLC Agreement.

[54] *See* Section 9.8(b)(i) of the LLC Agreement.

[55] *See* Section 9.8(b)(ii) of the LLC Agreement.

[56] *See* Section 9.8(b)(iii) of the LLC Agreement.

[57] *See* Section 2.1 of the LLC Agreement.

[58] *See* Sections 9.8(d)(i) and (ii) of the LLC Agreement.

[59] *See* Section 9.8(d)(iv) of the LLC Agreement.

[60] *See id.*

[61] *See* Section 9.8(a) of the LLC Agreement.

[62] 17 CFR 249.1 and 17 CFR 249.1a.

[63] This reporting requirement applies only to exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange. *See* Form 1, Exhibit K.

[64] 17 CFR 240.6a–2(a)(2).

that exchange or a facility thereof.[65] Although it is common for a member to have an ownership interest in an exchange or a facility of an exchange, such member's interest could become so large as to raise questions whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. A member that has a controlling interest in the exchange or a facility might attempt to direct the exchange to refrain from diligently surveilling the member's conduct or from punishing any improper conduct.

The Commission believes that BIDS's Interest is consistent with the Act because the LLC Agreement is reasonably designed to address these concerns. The LLC Agreement provides that if, during at least four of the preceding six calendar months, the average daily trading volume in NYBX exceeds 10% of the aggregate average daily trading volume of NYSE[66] and a Member (other than NYSE), either alone or together with its Related Persons, owns Interests exceeding the Concentration Limitation, then, within 180 days: (1) an independent third-party SRO engaged by the Company must begin to conduct market surveillance of the Member with respect to such Member's trading activity in both NYBX and the Exchange; or (2) the Member must reduce its Interest in the Company such that it does not exceed the Concentration Limitation.[67] The Commission believes that, if NYBX accounts for a material percentage of the Exchange's volume, there is a risk that the Exchange's business interests could undermine its ability to vigorously regulate BIDS. The LLC Agreement provides for two reasonable ways of addressing that risk: (1) require an independent SRO to conduct market surveillance of BIDS if NYBX accounts for a material percentage of the Exchange's volume; or (2) reduce the business conflict faced by NYSE by requiring BIDS to lower its Interest in the Company to below 20%. The Commission further believes that 180 days is a reasonable period in which to implement one of these two actions.

E. NYSE Rule 2B

NYSE Rule 2B provides, in relevant part, that: ''[w]ithout 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. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange.''[68] The Exchange, through its wholly owned subsidiary NYSE Market, Inc. (''NYSE Market''), a Delaware corporation, currently owns 8.75% of the aggregate limited partnership interests in BIDS,[69] which will become a member of NYSE in connection with the establishment of NYBX.[70] In addition, BIDS is an affiliate of an affiliate of the Exchange because BIDS and NYSE will each hold a 50% Interest in the Company.[71] Thus, both NYSE Market's ownership interest in BIDS and BIDS's affiliation with the Company would violate NYSE rules, absent Commission approval under Section 19(b) of the Act.

As part of its proposal, NYSE has requested that the Commission approve these two exceptions to Rule 2B, subject to the following limitations and conditions:[72]

1. NYSE and the Financial Industry Regulatory Authority (''FINRA'') have entered into an agreement pursuant to Rule 17d–2 under the Act,[73] under which FINRA is allocated regulatory responsibilities to review BIDS's compliance with certain NYSE rules.[74]

2. NYSE Regulation will monitor BIDS for compliance with NYSE's trading rules and will collect and maintain certain related information.[75]

3. NYSE Regulation has agreed with NYSE that NYSE Regulation will provide a report to NYSE's CRO, on a quarterly basis, that: (i) quantifies all alerts (of which NYSE Regulation is aware) that identify BIDS as a participant that has potentially violated NYSE or Commission rules, and (ii) quantifies the number of all investigations that identify BIDS as a participant that has potentially violated NYSE or Commission rules.

4. NYSE has proposed an amendment to Rule 2B (in this filing) that will require NYSE and BIDS to establish and maintain procedures and internal controls reasonably designed to ensure that BIDS and its affiliates do not have access to non-public information relating to the Exchange, obtained as a result of its affiliation with NYSE, until such information is available generally to similarly situated members of NYSE.[76] Under the proposed rule, BIDS and its affiliates may have access to non-public information relating to the parties' obligations under the LLC Agreement, and such non-public information shall be kept confidential in accordance with Section 14.1 of the LLC Agreement.[77]

5. Section 9.9 of the LLC Agreement provides that if, during at least four of the preceding six calendar months, the average daily trading volume in NYBX exceeds 10% of the aggregate daily trading volume of NYSE, then, within 180 days, either an independent third-party SRO engaged by the Company must begin to conduct surveillance of BIDS with respect to BIDS's trading activity in both NYBX and NYSE, or BIDS must reduce its interest in the Company such that it does not exceed the Concentration Limitation.[78]

6. NYSE Market currently owns less than a 9% equity interest in BIDS and does not have any veto or other special voting rights with respect to the management or operation of BIDS. NYSE, or any of its affiliates, may not directly or indirectly increase such equity interest without prior Commission approval.

7. The proposed exception from NYSE Rule 2B to permit NYSE's ownership interest in BIDS and BIDS's affiliation with the Company (which is an affiliate of NYSE) would be for a pilot period of 12 months.

The Commission finds that the proposed exception from NYSE Rule 2B to permit NYSE's ownership interest in BIDS and BIDS's affiliation with the Company is consistent with the Act. In

[65] *See*, *e.g.*, BeX Order, BOX Order, CBSX Order, and ISE Stock Order, *supra* note 17.

[66] The aggregate average daily trading volume in NYBX would be calculated based upon the trading volume of NYBX itself combined with trading volume in the NYSE Display Book that originated in NYBX, if any.

[67] *See* Section 9.9 of the LLC Agreement.

[68] NYSE Rule 2B states that the term ''affiliate'' would have the meaning specified in Rule 12b–2 under the Act, 17 CFR 240.12b–2.

[69] As a result of this ownership interest, NYSE Market is a limited partner in BIDS. The Exchange has stated that it and its affiliates do not have any voting or other control arrangements with any of the other limited partners or general partner of BIDS. *See* Notice, *supra* note 3, 73 FR at 71068.

[70] *See* Notice, *supra* note 3, 73 FR at 71062.

[71] Specifically, the Company is an affiliate of the Exchange and BIDS is an affiliate of the Company.

[72] *See* Notice, *supra* note 3, 73 FR at 71068–71069.

[73] 17 CFR 240.17d–2.

[74] NYSE also stated that BIDS is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. *See* Notice, *supra* note 3, 73 FR at 71068.

[75] Specifically, NYSE Regulation ''will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where BIDS (in its capacity as an NYSE member) 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 Examination.'' Notice, *supra* note 3, 73 FR at 71068.

[76] *See* proposed NYSE Rule 2B, commentary.01.

[77] *See id. See also supra* notes 22 and 23 and accompanying text.

[78] *See supra* notes 53 to 56 and accompanying text for a discussion of the Concentration Limitation.

particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[79] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[80] NYSE Market's ownership interest in BIDS and the joint ownership of the Company by NYSE and BIDS raise similar concerns. The Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange holds an ownership interest in a member or is affiliated with one of its members.

Nevertheless, in view of the conditions described above, the Commission believes that it is consistent with the Act to permit the proposed exceptions to NYSE Rule 2B. These conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. FINRA will conduct member regulation of BIDS and—if trading volume from the facility grows sufficiently large and BIDS does not wish to reduce its ownership interest in the Company—might also be required to conduct market regulation of BIDS. Furthermore, NYSE's CRO will be provided quarterly reports of any alerts or investigations relating to BIDS. These conditions appear reasonably designed to promote robust and independent regulation of BIDS. NYSE and BIDS also must establish and maintain procedures and internal controls that are reasonably designed to prevent BIDS and its affiliates from deriving any unfair informational advantage resulting from its affiliation with NYSE. Finally, NYSE has proposed that the exception from NYSE Rule 2B be on a pilot basis, which will provide NYSE and the Commission an opportunity to assess whether there might be any adverse consequences of the exception and whether a permanent exception is warranted. The Commission believes that, taken together, these conditions are reasonably designed to mitigate potential conflicts between the Exchange's commercial interest in BIDS and its regulatory responsibilities with respect to BIDS.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[81] that the proposed rule change (SR–NYSE–2008–120) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[82]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–1806 Filed 1–27–09; 8:45 am]

BILLING CODE 8011–01–P

[79] 15 U.S.C. 78f(b)(5).

[80] *See, e.g.*, Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving combination of NYSE and Archipelago Holdings, Inc.); and 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62) (order approving acquisition of the American Stock Exchange by NYSE Euronext).

[81] 15 U.S.C. 78s(b)(2).

[82] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6495]

Designation of Benefits Under the Foreign Missions Act; Diplomatic and Consular Exemption From Tobacco Excise Taxes

After due consideration of the benefits, privileges and immunities provided to missions of the United States under the Vienna Diplomatic and Consular Conventions and other governing treaties, and in order to facilitate relations between the United States and foreign governments, to improve or maintain the availability of tax exemption privileges for the United States, and by virtue of the authority vested in me under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.*, and Delegation of Authority No. 214, § 14, dated September 20, 1994, I hereby designate as a benefit under the Act, to be granted to foreign diplomatic and consular missions and personnel in the United States on the basis of reciprocity and as otherwise determined by the Department, to include personnel of international organizations and missions to such organizations who are otherwise entitled to exemption from direct taxes, exemption from Federal and State or local excise taxes imposed with respect to tobacco products (as defined in 26 U.S.C. 5702) manufactured, packaged or sold in the United States. Procedures governing implementation of this benefit will be established by the Department of the Treasury.

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

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Cliff Seagroves, 202–647–1395, *seagrovescc@state.gov.*

Legal Information: Susan Benda, 202–647–0308, *bendas@state.gov.*

Dated: January 14, 2009.

Eric J. Boswell,

Ambassador, Director of the Office of Foreign Missions and Assistant Secretary for Diplomatic Security, Department of State.

[FR Doc. E9–1723 Filed 1–27–09; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 6496]

Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and to Initiate Consultation under Section 106 of the National Historic Preservation Act for the Proposed Transcanada Keystone XI Pipeline

Public Notice

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: TransCanada Keystone Pipeline, L.P. (Keystone) has applied to the United States Department of State for a Presidential Permit authorizing the construction, operation, and maintenance of facilities at the border of the United States for the importation of petroleum from a foreign country. Authorization is being requested in connection with Keystone's proposed international pipeline project (the Keystone XL Project), which is designed to transport crude oil production from the Western Canadian Sedimentary Basin to existing markets in the Texas Gulf Coast area. The Department of State receives and considers applications for Presidential Permits for such energy-related pipelines pursuant to authority delegated to it by the President under Executive Order 13337 of April 30, 2004 (69 FR 25299), as amended. To issue a Permit, the Department of State must

find that issuance would serve the national interest. In the course of processing such applications, the Department consults extensively with concerned Federal and State agencies, and invites public comment in arriving at its determination. With respect to the application submitted by Keystone, the Department of State has concluded that the issuance of the Presidential Permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. For this reason, Department of State intends to prepare an EIS to address reasonably foreseeable impacts from the proposed action and alternatives. Additionally Department of State has determined that issuance of a Presidential permit for the Keystone XL project triggers review under Section 106 of the National Historic Preservation Act and is consequently initiating the required consultation under that statute. Consultation will be conducted with State Historic Preservation Officers, Indian tribes, and the Advisory Council on Historic Preservation, and other consulting parties, as appropriate, to determine the locations (if any) of potential sites for inclusion on the National Register of Historic Places as well as the potential eligibility and findings of effect for cultural resources identified within the Keystone XL Area of Potential Effect. The purpose of this Notice of Intent (NOI) is to inform the public about the proposed action, announce plans for scoping meetings, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the EIS. As the proposed project may involve an action in a floodplain or wetland, the EIS will include a floodplain and wetlands assessment and floodplain statement of findings.

DATES: Department of State invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues, measures that might be adopted to reduce environmental impacts, and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** on January 28, 2009 and will continue until March 16, 2009. Written, electronic, and oral comments will be given equal weight and State will consider all comments received or postmarked by March 16, 2009 in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent practicable.

During this public scoping period, the Department of State plans to use the scoping process to help identify consulting parties and historic preservation issues for consideration under Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800). Because the project will cross lands under the jurisdiction of the U.S. Department of the Interior's Bureau of Land Management (BLM), Keystone has also filed applications with the BLM for a pipeline right-of-way (ROW) application (serial number MTM 98191) under the Mineral Leasing Act of 1920, as amended [(MLA) 30 U.S.C. 185]. BLM has jurisdiction over federal lands and is responsible for authorizing ROW grants under the MLA for the pipeline, pumping stations, access roads, and site improvements. The BLM is also expected to process ROW applications under the Federal Land Policy and Management Act (FLPMA) of 1976 for electrical transmission lines to supply power to the proposed pumping stations. For this reason, Department of State, with the BLM as a cooperating agency, intends to prepare an EIS to address environmental impacts of the proposed actions. BLM plans to process the ROW Grant and Temporary Use Permit in parallel with the processing of the Presidential Permit by DOS. BLM intends to use the EIS as its NEPA document for purposes of its permits. Separate Records of Decision will be prepared by each Federal agency pursuant to their respective action(s). The project also falls under the jurisdiction of the Montana Department of Environmental Quality (MDEQ) pursuant to the Montana Major Facility Siting Act (MFSA) and requires a review under the Montana Environmental Policy Act (MEPA). The Department of State understands that MDEQ also intends to utilize the EIS process to present information and analyses required before a decision is made under MFSA. This will be done parallel with the Department's processing of the application for the Presidential Permit.

DATES AND LOCATIONS FOR THE PUBLIC SCOPING MEETINGS

Meeting date	Location	Venue
Monday, February 9, 7–9 p.m	Beaumont, TX	Mary and John Gray Library, 8F, Lamar University, 211 Redbird Lane, Beaumont, TX 77705.
Tuesday, February 10, 7–9 p.m	Liberty, TX	VFW Hall, 1520 N. Main Street, Liberty, TX 77575.
Wednesday, February 11, 7–9 p.m	Livingston, TX	Livingston Junior High School, 1801 Highway 59 Loop N., Livingston, TX 77351.
Thursday, February 12, 7–9 p.m	Tyler, TX	Harvey Convention Center, 2000 W. Front Street, Tyler, TX 75702.
Tuesday, February 17, 7–9 p.m	Durant, OK	Holiday Inn Express, 613 University Place, Durant, OK 74701.
Wednesday, February 18, 7–9 p.m	Ponca City, OK	Econo Lodge Meeting Room, 212 S. 14th Street, Ponca City, OK 74601.
Thursday, February 19, 12–2 p.m	El Dorado, KS	El Dorado Civic Center, Main Meeting Room, 201 E. Central, El Dorado, KS 67042.
Thursday, February 19, 7–9 p.m	Clay Center, KS	Kansas National Guard Armory, 227 S. 12th Street, Clay Center, KS 67432.
Monday, February 23, 7–9 p.m	York, NE	York Community Center, 211 E. 7th Street, York, NE 68467.
Tuesday, February 24, 7–9 p.m	Atkinson, NE	Atkinson Community Center, 206 W. 5th Street, Atkinson, NE 68713.
Wednesday, February 25, 7–9 p.m	Murdo, SD	Murdo Elementary School, Mini-gym, 305 Jefferson Avenue, Murdo, SD 57559.
Thursday, February 26, 7–9 p.m	Faith, SD	Community Legion Hall, Main Street, Faith, SD 57626.
Thursday, February 26, 7–9 p.m	Buffalo, SD	Harding County Memorial, Recreation Center, 204 Hodge Street, Buffalo, SD 57720.
Monday, February 23, 7–9 p.m	Baker, MT	Thee Garage and Steakhouse, 19 W. Montana Avenue, Baker, MT 59313.
Tuesday, February 24, 7–9 p.m	Terry, MT	Terry High School, 215 East Park, Terry, MT 59349.

DATES AND LOCATIONS FOR THE PUBLIC SCOPING MEETINGS—Continued

Meeting date	Location	Venue
Wednesday, February 25, 12–2 p.m.	Circle, MT	Schmidts Super Valu, 105 10th Street, Circle, MT 59215.
Wednesday, February 25, 12–2 p.m.	Plentywood, MT	Grandview Hotel, Gold Dollar Banquet Room, 120 S Main St., Plentywood, MT 59254.
Wednesday, February 25, 7–9 p.m	Glendive, MT	Dawson Community College, UC102 Lecture Hall, 300 College Drive, Glendive, MT 59330.
Thursday, February 26, 12–2 p.m	Glasgow, MT	Cottonwood Inn and Suites, Highway 2 East, Glasgow, MT 59230.
Thursday, February 26, 7–9 p.m	Malta, MT	Great Northern Hotel, 2 South 1st Street East, Malta, MT 59538.

A court reporter will be present and will record comments for the record.

ADDRESSES: Written comments or suggestions on the scope of the EIS should be addressed to: Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520. Comments may be submitted electronically to *xlpipelineproject@state.gov*. Public comments will be posted on the Web site identified below.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the draft EIS when it is issued, contact Elizabeth Orlando at the address listed in the **ADDRESSES** section of this notice by electronic or regular mail as listed above, or by telephone (202) 647–4284 or by fax at (202) 647–5947.

Project details and environmental information on the Keystone XL Project application for a Presidential Permit, including associated maps downloadable from a Web site that is being established for this purpose: *http://www.keystonepipeline-XL.state.gov*. This Web site is expected to be operational on or about January 23, 2009. This Web site will accept public comments for the record.

Information on the Department of State Presidential Permit process can also be found at the above Internet address. The MLA and FLPMA application submitted to BLM will be on file at its office in Billings, Montana.

A TransCanada hosted project Web site is also available at *http://www.transcanada.com/keystone/kxl.html*. The Keystone XL Project toll-free number is 1–866–717–7473 (United States and Canada).

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Keystone is proposing to construct and operate a crude oil pipeline and related facilities from Hardisty, Alberta, Canada, to the Port Arthur and east Houston areas of Texas in the United States (U.S.). The project, known as the Keystone XL Project, would have a nominal capacity to deliver up to 900,000 barrels per day (bpd) of crude oil from an oil supply hub near Hardisty to existing terminals in Nederland (Jefferson County) near Port Arthur and Moore Junction (Harris County) in Houston, Texas. The Keystone XL Project would consist of three new pipeline segments (the Steele City Segment, the Gulf Coast Segment and the Houston Lateral Segment) and would also provide additional pumping capacity on the Cushing Extension Segment of the previously-permitted Keystone Pipeline Project (Keystone Cushing Extension). The Steele City Segment of the Keystone XL Project would extend from Hardisty, Alberta southeast to Steele City, Nebraska (Jefferson County). The Gulf Coast Segment would extend from Cushing, Oklahoma (Lincoln County) south to Nederland, Texas (Jefferson County). The Houston Lateral Segment would extend from the Gulf Coast Segment, in Liberty County, Texas southwest to Moore Junction, Harris County, Texas, near the Houston Ship Channel. In total, the Keystone XL Project would consist of approximately 1,702 miles of new, 36-inch-diameter pipeline, consisting of about 327 miles in Canada and 1,375 miles within the United States. It would interconnect with the northern and southern termini of the previously approved 298-mile-long, 36-inch-diameter Keystone Cushing Extension. The Keystone XL Project would be placed into service in phases. The project would be located primarily in rural areas, with more populated areas occurring around Houston, Texas. U.S. counties that could possibly be affected by construction of the proposed pipeline are:

Montana: Phillips, Valley, McCone, Dawson, Prairie, Fallon.

South Dakota: Harding, Butte, Perkins, Meade, Pennington, Haakon, Jones, Lyman, Tripp.

Nebraska: Keya Paha, Rock, Holt, Garfield, Wheeler, Greele, Boone, Nance, Merrick, Hamilton, York, Fillmore, Saline, Jefferson.

Kansas: Clay, Butler.

Oklahoma: Atoka, Bryan, Coal, Creek, Hughes, Lincoln, Okfuskee, Payne, Seminole.

Texas: Angelina, Cherokee, Delta, Fannin, Franklin, Hardin, Hopkins, Jefferson, Lamar, Liberty, Nacogdoches, Polk, Rusk, Smith, Upshur, Wood, Chambers, Harris.

In Canada, the project, as proposed, would involve the construction of approximately 327 miles of 36-inch diameter pipeline from Hardisty to the U.S./Canadian border near Morgan, Montana (Phillips County). The Department understands that appropriate regulatory authorities in Canada will be conducting an independent environmental review process for the Canadian facilities.

In the United States, the proposed Keystone XL pipeline would consist of 1,375 miles of 36-inch diameter pipeline. The Steele City Segment would be approximately 850 miles long. The Gulf Coast Segment would be approximately 478 miles long. The Houston Lateral would be approximately 47 miles long.

Keystone would construct the Keystone XL project within a 110-foot-wide corridor, consisting of both a temporary 60-foot-wide construction right-of-way (ROW) and a 50-foot-wide permanent ROW. The 60-foot width and 50-foot width may not overlap. Extra temporary workspace would be required in some locations, including steep slopes, rough terrain, stream, wetland and road crossings.

Aboveground facilities for the proposed Keystone XL Project would include 30 pump stations and 73 mainline valves (located within the ROW). The pump stations would enable Keystone to maintain the pressure required to make crude oil deliveries. Valves are proposed to be installed and located as dictated by the hydraulic characteristics of the pipeline and as required by Federal regulations. Construction of delivery metering and other facilities at Nederland and the Houston Ship Channel in Texas would measure the amount of product transported and delivered to terminals.

A new tank farm would be required where the Keystone XL Project would intersect with the Keystone Cushing Extension near Steele City, Nebraska (Jefferson County). This tank farm would occupy approximately 50 acres of land and consist of three, 350,000 barrel storage tanks with electrically driven pumps and other systems to manage the oil movements from the Keystone XL pipeline onto the Keystone Cushing Extension.

It is estimated that approximately 205 perennial water body crossings could occur during the proposed construction of the Keystone XL mainline. Approximately 33 of these would be crossed with the Horizontal Directional Drilling (HDD) method to avoid river and river bank impacts. Proposed major river crossings would include but are not limited to the Missouri, Milk, Niobrara, Yellowstone, Little Missouri, Cheyenne, White, Platte, Deep Fork, North Canadian, Canadian, Red, North Sulphur, South Sulphur, Angelina, Trinity, and San Jacinto Rivers. All of these major rivers would be crossed by the HDD construction method. Wetlands would be crossed by the proposed route.

New pump stations and remotely-activated valves proposed to be located along the pipeline route would require electrical transmission power lines and facility upgrades in multiple locations along its route. These proposed electrical components would be constructed and operated by local power providers, not Keystone. The construction and operation of these facilities would be considered connected actions under NEPA and associated actions under MFSA and, therefore, will be evaluated within the EIS.

Keystone plans to begin construction of the pipeline in 2010. Proposed construction would take place in phases, with the Gulf Coast Segment and Houston Lateral completed in 2011 and the Steele City Segment and tank farm completed in 2012. Proposed construction is planned to occur over an approximately 8–12 month period for each phase.

Land Requirements

It is estimated that construction of the project as proposed would cause approximately 20,787 acres of land to be disturbed as temporary construction workspace. Of the 20,787 acres disturbed during construction, approximately 8,810 acres of land would be required as permanent ROW. Approximately 11,977 disturbed acres would be restored and returned to their previous use after construction. As proposed, approximately 2,441 acres of permanent ROW would not be restored to forested conditions, but rather herbaceous vegetation. Another 206 acres would serve to provide adequate space for aboveground facilities, including pump stations, valves, etc. for the life of the pipeline. As currently proposed, 42.6 miles of federally owned lands would be crossed. This includes 42.2 miles of BLM land and 0.4 miles of Department of Defense land (managed by the U.S. Army Corps of Engineers). The number of miles of conservation easements administered by the U.S. Department of Agriculture under the Conservation Reserve Program and Wetlands Reserve Program has not been determined at this time.

The EIS Process

NEPA requires the Department of State to take into account the environmental impacts that could result from the approval of a Presidential Permit authorizing construction, operation, and maintenance of pipeline facilities for the importation of crude oil to be located at the international border of the United States and Canada. The Department of State will use the EIS to assess the environmental impact that could result if Keystone is granted a Presidential permit for the Keystone XL Pipeline Project. A third party contractor has been selected to prepare the EIS which will be reviewed by the Department of State and the cooperating agencies.

NEPA also requires the Department of State and BLM to identify concerns the public may have about proposals under consideration by the Department of State. This process is referred to as ''scoping.'' The BLM plans to adopt the EIS as its analysis under NEPA if the document meets the stated purpose and need of BLM action. The purpose and need of the BLM action in this NOI is to process received application for MLA sand FLPMA rights-of-way grants for legal use and access across the Federal public lands under the BLM jurisdiction. At this time, BLM has determined no approved land use plans would require amendment if the proposal is approved. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Department of State is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received during the scoping period will be considered during preparation of the EIS. Comments received after the close of the comment period will be considered to the extent practicable.

In the EIS, the Department of State 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;
- Fish, wildlife, and vegetation;
- Threatened and endangered species;
- Cultural resources;
- Land use, recreation and special interest areas;
- Visual resources;
- Air quality and noise;
- Socioeconomics; and,
- Reliability and safety.

In the EIS, the Department of State will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on affected resources. In addition, a ''no action alternative'' will be considered.

The Department of State's independent analysis of the issues will be included in a draft EIS. The draft EIS will be published and mailed to relevant Federal, State, and local government agencies, elected officials, environmental and public interest groups, Indian tribes, affected landowners, commenters, local libraries, newspapers, and other interested parties. A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction, operation and maintenance of the proposed project. Currently identified issues that the Department believes warrant attention include:

- Construction rights-of-way and associated pipeline impacts.
- Potential effects on farmland and soils with a high potential for compaction.
- Potential impacts to existing land uses, including agricultural, residential, range and pasture lands, and timber lands.
- Potential impacts to perennial and intermittent water bodies.
- Potential temporary and permanent impacts on wetlands.
- Potential impacts to fish and wildlife habitat, including potential impacts to Federal and State-listed threatened and endangered species.
- Potential impacts to state and federal lands, including federally-

managed areas under BLM jurisdiction and federally-managed conservation lands.

- Potential impacts to state-managed conservation lands.
- Potential impacts to historic and pre-historic cultural resource sites.
- Potential impacts and benefits of the construction workforce on local housing, infrastructure, public services and economy.
- Public safety and potential hazards associated with the transport of crude oil.
- Alternative alignments for the pipeline route.
- Assessment of the cumulative effect of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the project area.
- Potential generation of greenhouse gasses.
- Public participation.

This list of issues may be changed based on public comments and analysis.

You are encouraged to become involved in this process and provide your specific comments or concerns about the proposed project. By becoming a commenter, your concerns will be considered by the Department of State and addressed appropriately in the EIS. Your comments should focus on the potential environmental impacts, reasonable alternatives (including alternative facility sites and alternative pipeline routes), and measures to avoid or lessen environmental impacts. Parties interested in being involved in Section 106 consultation should also contact the Department of State. The more specific your comments, the more useful they will be.

The public scoping meetings identified above are designed to provide another opportunity to offer comments on the proposed project. Interested individuals and groups are encouraged to attend these meetings and to present comments on the environmental issues they believe should be addressed in the EIS. Again, written comments are considered with equal weight in the process relative to those received in public scoping meetings.

Issued in Washington, DC on January 28, 2009:

Stephen J. Gallogly,

Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. E9–1828 Filed 1–27–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6494]

Executive Order 11423, as Amended; Notice of Receipt of Application for a Presidential Permit for an International Rail Bridge on the U.S.-Mexico Border near Laredo, Texas, and Nuevo Laredo, Tamaulipas, Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State hereby gives notice that, on December 31, 2008, it received from Kansas City Southern (KCS) an application for a Presidential permit to authorize the construction, operation, and maintenance of a new international rail bridge called the East Loop Bypass on the U.S.-Mexico border near Laredo, Texas, and Nuevo Laredo, Tamaulipas, Mexico. According to the application, KCS is an international transportation company comprised of three railroads and owns and operates an existing railroad bridge in Laredo. The proposed railroad bridge would be about 12 miles south of the existing railroad bridge. According to the application, the East Loop Rail Bypass project would relocate rail traffic from the Laredo city center, provide for additional rail capacity, enhance corridor safety, and improve the efficiency of cross-border rail crossings. In addition to the international bridge itself, KCS proposes as part of the project to construct about 50 miles of track to connect the new bridge to existing rail lines.

The Department's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant federal and state agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether issuance of a Presidential permit for this proposed bridge would be in the U.S. national interest.

DATES: Interested members of the public are invited to submit written comments regarding this application on or before April 28, 2009, to Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov*, or by mail at WHA/MEX—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov*; by phone at 202–647–9894; or by mail at WHA/MEX—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http:/www.state.gov/pwha/rt/permit/.*

SUPPLEMENTARY INFORMATION: This application and supporting documents are available for review in the Office of Mexican Affairs during normal business hours.

Dated: January 21, 2009.

Alex Lee,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. E9–1725 Filed 1–27–09; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 17, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0010.

Date Filed: January 16, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 6, 2009.

Description: Application of 1263343 Alberta Inc d/b/a enerjet (''enerjet'') requesting an exemption and foreign air permit to engage in non-scheduled charter trips in foreign air transportation between Canada and the United States.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–1800 Filed 1–27–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed the week ending January 17, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0007.
Date Filed: January 14, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC31 North & Central Pacific. TC3 (except Japan)—North America, Caribbean. TC3–Central America, South America. Special Passenger Amending Resolution from Hong Kong (Memo 0471).
Intended effective date: 15 January 2009.

Docket Number: DOT–OST–2009–0008.
Date Filed: January 14, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC1 Areawide Resolution (Memo 0384).
Intended effective date: 1 January 2009.

Docket Number: DOT–OST–2009–0009.
Date Filed: January 14, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC1 Caribbean Resolution (Memo 0385).
Intended effective date: 1 January 2009.

Docket Number: DOT–OST–2009–0011.
Date Filed: January 14, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC1 Longhaul Between USA and Chile, Panama, Peru Resolution (Memo 0387).
Intended effective date: 1 January 2009.

Docket Number: DOT–OST–2009–0012.
Date Filed: January 14, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC1 Within South America Resolution (Memo 0388).
Intended effective date: 1 January 2009.

Docket Number: DOT–OST–2009–0013.
Date Filed: January 14, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC1 Longhaul Except Between USA and Chile, Panama, Peru Resolution (Memo 0386).
Intended effective date: 1 January 2009.

Docket Number: DOT–OST–2009–0015.
Date Filed: January 16, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC3 Within South East Asia, except between Malaysia and Guam, Resolutions & Specified Fares Tables (Memo 1257).
Intended effective date: 1 April 2009.

Renee V. Wright
Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E9–1802 Filed 1–27–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventy-Eighth Meeting—Special Committee 159—Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held February 9–13, 2008, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. The agenda will include:

February 9

- Work Group Sessions, Half Day, 1 p.m. to 5 p.m., Working Group 2B, GPS L1 Only MOPS, MacIntosh-NBAA Room & Hilton-ATA Room.

February 10

- All Day, Working Group 2B, GPS L1 Only MOPS, ARINC Room.
- All Day, Working Group 2, GPS/WAAS), MacIntosh-NBAA Room & Hilton-ATA Room.

February 11

- All Day, Working Group 2B, GPS L1 Only MOPS, MacIntosh-NBAA Room & Hilton-ATA Room.
- All Day, Working Group 2C, GPS/Inertial, Colson Board Room.

February 12

- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton-ATA Room.

February 13

- Open Plenary (Chairman's Introductory Remarks, Approval of Summary of the Seventy-Sixth Meeting held April 18, 2008, RTCA Paper No. 204–08/SC159–967).
- Review Working Group (WG) Progress and Identify Issues for Resolution
- GPS/3nd Civil Frequency (WG–1)
- GPS/WAAS (WG–2)
- GPS/GLONASS (WG–2A)
- GPS/L1 Only MOPS (WG–2B)
- GPS/Inertial (WG–2C)
- GPS/Precision Landing Guidance and (WG–4)
- GPS/Airport Surface Surveillance (WG–5)
- GPS/Interference (WG–6)
- GPS/Antennas (WG–7)
- GPS/GRAS (WG–8)
- Review of EUROCAE Activities.
- Consider for Approval, Revised DO–253B—*Minimum Operational Performance Standards for GPS Local Area Augmentation System Airborne Equipment,* RTCA Paper No. 202–08/SC159–965.
- Consider for Approval, Revised DO–246C—*GNSS Based Precision Approach Local Area Augmentation System (LAAS)*, RTCA Paper No. 203–08/SC159–966.
- Closing Plenary Session (Assignment/Review of Future Work, Other, Date and Place of Next Meeting.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 16, 2009.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. E9–1741 Filed 1–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Decision by FHWA and Notice of Limitation of Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces the availability of a Record of Decision by FHWA pursuant to the requirements of the National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. 4321, as amended and the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508). In addition, this Notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). These actions relate to a proposed border crossing project, Detroit River International Crossing Study in Detroit, Wayne County, Michigan. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 771 and 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal Agency actions on the highway project will be barred unless the claim is filed on or before July 27, 2009 (180 days from January 28th). If the Federal law that authorizes that judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. David Williams, Environmental Program Manager, Federal Highway Administration Michigan Division, 315 West Allegan Street, Room 201, Lansing, MI 48933; phone: (517) 702–1820, Fax: (517) 377–1804; and e-mail: *David.Williams@FHWA.DOT.gov*. Mr. Ryan Rizzo, Major Project Manager, Federal Highway Administration Michigan Division, 315 West Allegan Street, Room 201, Lansing, MI 48933; phone: (517) 702–1833, Fax: (517) 377–1844; E-mail: *Ryan.Rizzo@fhwa.dot.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following border crossing project in the State of Michigan: Detroit River International Crossing Study, Wayne County. The Selected alternative is the crossing system that is composed of the Preferred Interchange (at I–75), Plaza (labeled P-a in the FEIS), and Bridge Crossing (labeled X–10B in the FEIS). The selected alternative is proposed for the Delray area within the City of Detroit, Wayne County, Michigan. The project lies primarily between Lafayette Street just north of I–75 and the Detroit River to the south, and West End Street and Clark Street (west and east limits). The river crossing is between Zug Island and historic Fort Wayne, approximately two miles downstream from the existing Ambassador Bridge.

The actions by the Federal agencies, and the laws under which such action were taken, are described in the Final Environmental Impact Statement for the project approved on December 5, 2008, in the FHWA Record of Decision (ROD) issued on January 14, 2009, and in other project records. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the Michigan Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at: *http://www.michigan.gov/mdot/0,1607,7–151–9621_11058_36266---,00.html* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Act [23 U.S.C. 109].
2. Air; Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.] Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].
6. Social and Economics: Civil Rights Act of 1964 [42 U.S.C 2000(d)–2000(d)(1)]; American Indians Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended [42 U.S.C. 61].
7. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [14 U.S.C. 1451–1465]; Land and Water Conservation fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [42 U.S.C. 401–406]; TEA–21 Wetland Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
8. Hazardous Materials: Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 9501–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource, Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].
9. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplains Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13112, Invasive Species; E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

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

Authority: 23 U.S.C. 139(1)(1).

Issued on: January 22, 2009.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. E9–1789 Filed 1–27–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2008–1239]

Texas Offshore Port System Crude Oil Deepwater Port License Application

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration announces that the Coast Guard, in coordination with the Maritime Administration, will prepare an environmental impact statement (EIS) as part of the environmental review of this license application. The application describes a project that would be located approximately 30 statute miles southeast of Freeport, Brazoria County, Texas. Publication of this notice begins a scoping process that will help identify and determine the scope of environmental issues to be addressed in

the EIS. This notice requests public participation in the scoping process and provides information on how to participate.

DATES: The public meeting in Freeport, TX will be held on February 18, 2009. The public meeting will be held from 6:30 p.m. to 8 p.m. and will be preceded by an open house from 5 p.m. to 6 p.m. The public meeting may end later than the stated time, depending on the number of persons wishing to speak.

The public meeting in Texas City, TX will be held on February 19, 2009. The public meeting will be held from 6:30 p.m. to 8 p.m. and will be preceded by an open house from 5 p.m. to 6 p.m. The public meeting may end later than the stated time, depending on the number of persons wishing to speak.

Material submitted in response to the request for comments on the license application must reach the Docket Management Facility by February 27, 2009.

ADDRESSES: The open house and public meeting in Freeport will be held at: The Freeport Intermediate School, cafeteria and gymnasium, respectively, 1815 W. 4th Street, Freeport 77541. (979) 730–7240.

The open house and public meeting in Texas City will be held at: The Nessler Center, Surf Room and Captain Room, respectively, 2010 5th Avenue North, Texas City, Texas 77590. (409) 643–5990.

The license application, comments and associated documentation is available for viewing at the Federal Docket Management System (FDMS) Web site: *http://www.regulations.gov* under docket number USCG–2008–1239.

Docket submissions for USCG–2008–1239 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ray Martin, U.S. Coast Guard, telephone: 202–372–1449, e-mail: *raymond.w.martin@uscg.mil*, or Linden Houston, Maritime Administration, telephone: 202–366–4839, e-mail: *Linden.Houston@dot.gov*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at an informational open house, and to comment at a public meeting on environmental issues related to the proposed deepwater port. Your comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS.

In order to allow everyone a chance to speak at the public meeting, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility (see Request for Comments).

Our public meeting location is wheelchair-accessible. If you plan to attend the open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on environmental issues related to the proposed deepwater port. The public meeting is not the only opportunity you have to comment. In addition to or in place of attending a meeting, you can submit comments to the Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2008–1239.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to FDMS, *http://www.regulations.gov*.
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (*http://www.regulations.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS Web site, and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see PRIVACY ACT. You may view docket submissions at the Department of Transportation Docket Management Facility or electronically on the FDMS Web site (see **ADDRESSES**).

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for the proposed Texas Offshore Port System crude oil deepwater port appears in the **Federal Register** on January 9, 2009 (74 FR 984). The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's natural and human environmental impacts. The Coast Guard is the lead agency for determining the scope of this review, and in this case the Coast Guard has determined that review must include preparation of an EIS. This notice of intent is required by 40 CFR 1501.7, and briefly describes the proposed action and possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process, or the EIS to the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying

the application, which for purposes of environmental review is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when the Coast Guard has completed the following actions:

- Invites the participation of Federal, State, and local agencies, any affected Indian tribe, the applicant, and other interested persons;
- Determines the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identifies and eliminates, from detailed study, those issues that are not significant or that have been covered elsewhere;
- Allocates responsibility for preparing EIS components;
- Indicates any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identifies other relevant environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the Coast Guard will prepare a draft EIS, and we will publish a **Federal Register** notice announcing its public availability. (If you want that notice to be sent to you, please contact the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.) You will have an opportunity to review and comment on the draft EIS. The Coast Guard will consider those comments and then prepare the final EIS. As with the draft EIS, we will announce the availability of the final EIS and once again give you an opportunity for review and comment.

Summary of the Application

Texas Offshore Port System, a general partnership consisting of Oiltanking Freeport, L.P., TEPPCO O/S Port System, LLC and Enterprise Offshore Port System, LLC, proposes to own, construct, and operate a deepwater port (DWP), named Texas Offshore Port System (TOPS), in the Federal waters of the Outer Continental Shelf in Minerals Management Service (MMS) lease block Galveston Area A56 (GA 56), approximately 30 statute miles southeast of Freeport, Texas, in a water depth of approximately 120 feet. The proposed DWP will serve as an offshore crude oil receiving terminal and transmission facility. An average of 1,700,000 barrels of oil per day will be offloaded at the terminal and will be delivered via a new pipeline that will terminate at a crude oil storage terminal located in Texas City, Texas. Two Single Point Mooring (SPM) Buoys will be installed to offload crude oil from crude oil tankers. A third SPM may be added in the future. Dual 42-inch outside diameter (OD), 4,000-ft (1,219-m) long offloading pipelines will carry the crude oil to a new Metering and Pumping Platform. At the platform the crude oil will be increased in pressure to 1,950 pounds per square inch gauge discharge pressure to achieve a flow rate of up to 100,000 barrels per hour into the departing Offshore Pipeline. A Quarters and Control Platform will be connected by a bridge to the Metering and Pumping Platform. A new 8 and 5/8-inch OD fuel gas pipeline that will be approximately 36 miles long (58 km) will supply natural gas to the Metering and Pumping Platform. It will originate from an existing platform in MMS lease block Brazos Area BR 538 (BR 538). The new Offshore Pipeline will be a 42-inch OD pipeline and approximately 34.86 miles long. It will transport the crude oil to a new valve station located in Freeport, Texas. From the valve station a new 48-mile, 42-inch OD Onshore Pipeline will transfer the crude oil to a new crude oil storage terminal in Texas City, Texas. A new intermediate Onshore Pump Station will be located along the Onshore Pipeline to boost the pressure of the crude oil. The new crude oil storage terminal, the Texas City Crude Terminal, will consist of seven tanks, six with a storage capacity of 600,000 barrels and one with a storage capacity of 300,000 barrels.

Pipelines and structures such as the moorings may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act which are administered by the U.S. Army Corps of Engineers (USACE). TOPS will also require permits from the Environmental Protection Agency (EPA) pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended. The new pipeline will be included in the National Environmental Policy Act (NEPA) review as part of the deepwater port application process. EPA and the USACE, among others, are cooperating agencies and will assist in the NEPA process as described in 40 CFR 1501.6; may participate in scoping meetings; and will incorporate the environmental impact statement (EIS) into their permitting processes. Comments sent to EPA or USACE will also be incorporated into the DOT docket and EIS to ensure consistency with the NEPA process.

Should a license be issued, TOPS anticipates being able to offload and transport crude oil in November 2010. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov.*

(Authority 49 CFR 1.66)

Dated: January 16, 2009.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–1514 Filed 1–27–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35212]

Kyle Railroad Company—Acquisition and Operation Exemption—Mid-States Port Authority

Kyle Railroad Company (Kyle), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Mid-States Port Authority (MSPA), a noncarrier, and to operate a 351.50-mile line of railroad extending between: (a) Milepost 531.00 at Limon, CO, and milepost 189.40 at Belleville, KS; (b) milepost 189.40 at Belleville, KS, and milepost 182.00 at Munden, KS; and (c) milepost 226.25 at Belleville and milepost 223.75, east of Belleville, in Lincoln and Kit Carson Counties, CO, and Sherman, Thomas, Sheridan, Decatur, Norton, Phillips, Smith, Jewell, and Republic Counties, KS.

As part of the Chicago, Rock Island and Pacific Railroad Company (Rock Island) bankruptcy proceeding, the Rock Island was authorized by the Interstate Commerce Commission (ICC) to abandon its entire rail system with certain conditions. *See Chicago, R. I. & R. P. Co. Abandonment*, 363 I.C.C. 150

(1980). On April 18, 1984, in Order No. 676A, the bankruptcy court authorized MSPA to purchase the 351.50-mile portion of the line. On April 30, 1984, MSPA and Kyle entered into an agreement and Kyle was authorized in *Kyle Railroad Company—Notice of Modified Certificate of Public Convenience and Necessity*, Finance Docket No. 30490 (ICC served June 4, 1984) to acquire from MSPA and to operate the line. Kyle is seeking the Board's authority as required by the agreement to acquire and operate the line and to remove the potential impediment to exercising its option to acquire the line.

The proposed transaction is scheduled to be consummated on June 1, 2009.

Kyle certifies that its projected annual revenues as a result of the transaction will not result in Kyle becoming a Class II or Class I rail carrier. However, because its projected annual revenues will exceed $5 million, Kyle also has certified to the Board that it has complied with the employee notice requirements of 49 CFR 1150.42(e). Pursuant to that provision, the exemption may not become effective until 60 days from the January 13, 2009, date of the revised certification to the Board, which would be March 13, 2009.

According to Kyle, there is no provision or agreement that may limit future interchange with a third-party connecting carrier.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by March 6, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35212, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicants' representative, Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: January 16, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–1544 Filed 1–27–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On September 23, 2008, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments received on the proposal, the FFIEC and the agencies will move forward with the most of the reporting changes, with limited modifications in response to certain comments, on the phased-in basis that had been proposed. The FFIEC and the agencies are continuing to evaluate certain other proposed revisions in light of the comments received thereon and will not implement these revisions on their proposed effective dates.

DATES: Comments must be submitted on or before February 27, 2009.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0081, 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*. 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.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated

Reports of Condition and Income, 3064–0052,'' by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.

• *Mail:* Herbert J. Messite (202–898–6834), Counsel, Attn: Comments, Room F–1052, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Herbert J. Messite, Counsel, (202) 898–6834, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise the Call Report, which are currently approved collections of information.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,620 national banks.

Estimated Time per Response: 46.76 burden hours.

Estimated Total Annual Burden: 303,027 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 877 state member banks.

Estimated Time per Response: 53.30 burden hours.

Estimated Total Annual Burden: 186,976 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,110 insured state nonmember banks.

Estimated Time per Response: 37.36 burden hours.

Estimated Total Annual Burden: 763,638 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 650 hours per quarter, depending on an individual institution's circumstances.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). At present, except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data are also used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

On September 23, 2008, the agencies requested comment on proposed revisions to the Call Report (73 FR 54807). The agencies proposed to implement the proposed changes to the Call Report requirements on a phased-in basis during 2009. A limited group of changes were proposed to take effect March 31, 2009; most revisions were proposed to take effect June 30, 2009; and a final group of revisions applicable only to trust institutions that complete the Call Report's Fiduciary and Related Services schedule were proposed to take effect December 31, 2009.[1]

The Call Report, as it has been proposed to be revised, will better support the agencies' surveillance and supervision of individual banks and enhance their monitoring of the industry's condition and performance. The proposed revisions reflected a thorough and careful review of the agencies' data needs in a variety of areas as banks encountered the most turbulent environment in more than a decade. Thus, the proposed revisions included new items that focus on areas in which the banking industry has faced heightened risk as a result of market

[1] In addition, on November 26, 2008, OMB approved the agencies' emergency clearance requests to add two items to Call Report Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments, effective December 31, 2008, that are applicable to all banks participating in the FDIC's Transaction Account Guarantee Program. A participating bank must report the amount and number of its noninterest-bearing transaction accounts, as defined in the FDIC's regulations governing the program, of more than $250,000 in Schedule RC–O, Memorandum items 4.a and 4.b. The FDIC will use this information to calculate assessments for participants in the Transaction Account Guarantee Program. Because OMB's approval of the agencies' emergency clearance request expires on May 31, 2009, the agencies proposed on December 23, 2008, under OMB's normal clearance procedures to collect these two items each quarter until the Transaction Account Guarantee Program ends. See 73 FR 78794.

turmoil and illiquidity and weakening economic and credit conditions. Where possible, the agencies sought to establish reporting thresholds for proposed new items. Other proposed new items would be relevant to only a small percentage of banks.

The agencies collectively received comments from seven respondents: Two banks, one bank holding company, three bankers' organizations, and a bank insurance consultant. None of these commenters specifically addressed all of the aspects of the proposal. Rather, individual respondents commented upon one or more of the proposed Call Report changes. In two cases, commenters brought up reporting matters that were not addressed in the agencies' proposal. The following is a summary of the general comments received on the proposed Call Report revisions. Sections II, III, and IV of this notice identify the changes proposed to take effect March 31, June 30, and December 31, 2009, respectively; discuss the agencies' evaluation of the comments received on the proposed changes that the FFIEC and the agencies have decided to implement, as modified; and describe the proposed Call Report revisions that remain under review by the FFIEC and the agencies.

One bankers' organization stated that it believed that the proposed revisions would provide additional information that would be useful to the agencies' assessment of risk. This organization expressed general agreement, on balance, with the proposed revisions, but also offered several suggested changes for the agencies' consideration.[2] Another bankers' organization indicated its understanding of the agencies' need for more information on certain types of loans currently under stress, but noted that the proposed revisions would require many community banks to submit significantly more data in the Call Report. This organization hoped that the increased staff time that would be needed to provide the proposed Call Report data would be offset by a reduction in on-site examination time through examiners' use of these data to better focus their examination priorities. In this regard, the agencies' intent in proposing the revisions to the Call Report was to enhance their risk-focused supervision, both from an off-site and an on-site perspective. The third bankers' organization commented on the amount of lead time necessary for institutions to implement systems changes to enable them to provide the requested additional data, recommending a minimum of three months between the agencies' publication of final revisions in the **Federal Register** and the effective date of the reporting changes.

Two commenters submitted comments on reporting issues that were not addressed in the agencies' Call Report proposal. One bank holding company sent a copy of separate correspondence that it had previously sent to three organizations suggesting a suspension of the accounting rules for other-than-temporary impairments on investment securities. By law, the accounting principles applicable to the Call Report must be consistent with or, if certain conditions are met, no less stringent than generally accepted accounting principles.[3] Therefore, the suggested suspension of accounting rules cannot be implemented for Call Report purposes.

One bankers' organization recommended that the Call Report be revised to require ''reciprocal deposits''[4] to be reported separately from brokered deposits. This bankers' organization also commented on the reporting of certain sweep accounts from other institutions, including affiliated institutions, in the Call Report. The impetus for the bankers' organization's comments about the reporting of these two types of deposits was a Notice of Proposed Rulemaking (NPR) on which the FDIC was simultaneously requesting comment concerning amendments to its deposit insurance assessment regulations (12 CFR part 327).[5] In the NPR, the FDIC proposed to alter the way in which it differentiates for risk in the risk-based assessment system; revise deposit insurance assessment rates, including base assessment rates; and make technical and other changes to the rules governing the risk-based assessment system. In its comment letter to the agencies on the proposed Call Report revisions, the bankers' organization observed that the Call Report may need to be revised depending on the FDIC's decisions on the treatment of these accounts for deposit insurance assessment purposes. Accordingly, the FFIEC and the agencies will monitor the outcome of the FDIC's rulemaking for assessments and the need for new Call Report data items for reciprocal deposits and certain sweep accounts to support any modifications that the FDIC makes in its risk-based assessment system in a final rule. In this regard, as proposed by the FDIC, these modifications would take effect April 1, 2009, which means that any new reporting requirements to provide data for the FDIC's risk-based assessment system would need to be in place June 30, 2009.

After considering the comments received on the proposal, the FFIEC and the agencies will move forward with most of the reporting changes, with limited modifications in response to certain comments, on the phased-in basis that had been proposed. The FFIEC and the agencies are continuing to evaluate certain other proposed revisions in light of the comments received thereon and will not implement these revisions on their proposed effective dates.[6]

The agencies recognize institutions' need for lead time to prepare for reporting changes, which led them to propose the phased-in implementation schedule for 2009. The Call Report items that will be new or revised effective March 31, 2009, are limited in number and all but one are linked to changes in generally accepted accounting principles taking effect at the same time. For the March 31, 2009, report date, banks may provide reasonable estimates for any new or revised Call Report item initially required to be reported as of that date for which the requested information is not readily available. This same policy on the use of reasonable estimates will apply to the reporting of other new or revised items when they are first implemented effective June 30 and December 31, 2009. In addition, the specific wording of the captions for the new or revised Call Report data items discussed in this notice and the numbering of these data items should be regarded as preliminary.

Type of Review: Revision of currently approved collections.

II. Call Report Revisions Proposed for March 2009

The agencies received no comments on the following two revisions that were proposed to take effect as of March 31,

[2] One bank that is a member of this bankers' organization referred to the organization's comment letter and appeared to concur with the organization's comments, but also addressed one aspect of the agencies' proposal on which the bankers' organization did not specifically comment.

[3] See 12 U.S.C. 1831n(a).

[4] The organization also recommended that ''reciprocal deposit'' be defined as a deposit ''obtained when an insured depository institution exchanges funds, dollar-for-dollar, with members of a network of other insured depository institutions, where each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members, and all funds placed through the network are fully insured by the FDIC.''

[5] 73 FR 61560, October 16, 2008.

[6] See section II.C on unused commitments, section III.D on past due and nonaccrual trading assets, and the portion of section III.E addressing the present value of unpaid premiums on sold credit protection.

2009, and therefore these revisions will be implemented as proposed:

• Revisions to several Call Report schedules in response to accounting changes applicable to noncontrolling (minority) interests in consolidated subsidiaries; and

• The addition of a new item to be reported annually on the bank's fiscal year-end date.

The agencies received one or more comments addressing each of the following proposed March 31, 2009, revisions:

• The addition of new items in response to a revised accounting standard that will provide information on held-for-investment loans and leases acquired in business combinations;

• Clarifications of the definition of the term ''loan secured by real estate'' and of the instructions for reporting unused commitments;

• Exemptions from reporting certain existing Call Report items for banks with less than $1 billion in total assets;

• Instructional guidance on quantifying misstatements in the Call Report; and

• The elimination of confidential treatment for data collected on fiduciary income, expenses, and losses.

The comments related to each of these proposed revisions are discussed below along with the agencies' response to these comments.

A. Loans and Leases Acquired in Business Combinations

Banks must apply Statement of Financial Accounting Standards No. 141 (Revised), Business Combinations (FAS 141(R)), which was issued in December 2007, prospectively to business combinations for which the acquisition date is on or after the beginning of their first annual reporting period beginning on or after December 15, 2008. Thus, for banks with calendar year fiscal years, FAS 141(R) will apply to business combinations with acquisition dates on or after January 1, 2009. Compared to current accounting practice, FAS 141(R) significantly changes the accounting for those loans and leases acquired in business combinations that will be held for investment.[7] In response to this accounting change, the agencies proposed to add new items to the Call Report loan and lease schedule (Schedule RC–C, part I) that would mirror the acquisition-date disclosures required by FAS 141(R). These new items would disclose the following information for four categories of loans (not subject to SOP 03–3) and leases that were acquired in each business combination that occurred during the year-to-date reporting period:

• The fair value of the loans and leases;

• The gross contractual amounts receivable; and

• The best estimate at the acquisition date of the contractual cash flows not expected to be collected.

The four categories of acquired held-for-investment loans (not subject to SOP 03–3) and leases are:

• Loans secured by real estate;

• Commercial and industrial loans;

• Loans to individuals for household, family, and other personal expenditures; and

• All other loans and all leases.

These new items will be completed by banks that have engaged in business combinations that must be accounted for in accordance with FAS 141(R) or that have been involved in push down accounting transactions to which the measurement principles in FAS 141(R) apply, i.e., in general, transactions for which the acquisition date is on or after January 1, 2009. A bank that has completed one or more business combinations or has applied push down accounting during the current calendar year would report these acquisition date data (as aggregate totals if multiple business combinations have occurred) in each Call Report submission after the acquisition date during that year. The acquisition date data would not be reported in years after the year in which the acquisition occurs.

One bankers' organization stated that it concurred with the agencies' proposal to require these additional disclosures for loans (not subject to SOP 03–3) and leases acquired in business combinations that occurred during the reporting period. No other commenter addressed these proposed additional disclosures. Accordingly, the agencies will implement these items in the March 31, 2009, Call Report, as proposed.

In their proposal, the agencies also stated that they were considering whether banks that have engaged in FAS 141(R) business combinations should provide additional information in the Call Report (beyond the disclosures described above) about acquired held-for-investment loans (not subject to SOP 03–3) and leases and the loss allowances established for them in periods after their acquisition. The proposal stated that the additional items under consideration included the outstanding balance of these acquired loans and leases, their carrying amount, and the amount of allowances for post-acquisition credit losses on these loans and leases. The agencies indicated that this information would help them as well as other Call Report users to track management's judgments regarding the collectability of the acquired loans and leases in periods after the acquisition date and evaluate fluctuations in the level of the overall ALLL as a percentage of the held-for-investment loan and lease portfolio in periods after a business combination. The agencies requested comment on the merits and availability of these post-acquisition loan and lease data and the period of time after a business combination that this information should be reported.

Two bankers' organizations commented on these additional loan and lease disclosures. One organization did not specifically address the merits of this information, stating only that if banks were required to report these additional data, they should report it only through the end of the calendar year of the business combination. The second organization agreed with the first organization concerning the reporting period for these additional data. However, this organization also stated its belief that the post-acquisition data on acquired loans and leases would often not be available because acquired performing loans and leases would tend to be combined with, rather than segregated from, a bank's other performing loans and leases.

After considering these comments, the agencies have decided for the time being not to add items to the Call Report for the outstanding balance of held-for-investment loans (not subject to SOP 03–3) and leases acquired in FAS 141(R) business combinations, their carrying amount, and the amount of allowances for post-acquisition credit losses on these loans and leases. The agencies will continue to monitor accounting and disclosure practices with respect to these acquired loans and leases and their post-acquisition allowances and assess their data needs in this area. Any future revisions to the Call Report to collect data on acquired loans and leases and post-acquisition allowances will be subject to notice and comment.

B. Clarification of the Definition of Loan Secured by Real Estate

The agencies have found that the definition of a ''loan secured by real estate'' in the Glossary section of the Call Report instructions has been interpreted differently by Call Report preparers and users. This has led to inconsistent reporting of loans collateralized by real estate in the loan

[7] This change in accounting treatment does not apply to acquired held-for-investment loans within the scope of American Institute of Certified Public Accountants Statement of Position 03–3, Accounting for Certain Loans or Debt Securities Acquired in a Transfer (SOP 03–3).

schedule (Schedule RC–C) and other schedules of the Call Report that collect loan data. As a result, the agencies proposed to clarify the definition by explaining that the estimated value of the real estate collateral must be greater than 50 percent of the principal amount of the loan at origination in order for the loan to be considered secured by real estate. Banks would apply this clarified definition prospectively and they need not reevaluate and recategorize loans that they currently report as loans secured by real estate into other loan categories on the Call Report loan schedule.

One bankers' organization stated that it believes that the proposed definition of a ''loan secured by real estate'' is workable and provides additional clarity. One bank submitted examples involving loans with real estate as collateral and asked how they would be reported based on the revised definition. The agencies will implement the clarified definition of ''loan secured by real estate'' as proposed but, in response to this latter comment, they will add examples to the definition to assist banks in understanding how it should be applied.

C. Clarification of Instructions for Unused Commitments

Banks report unused commitments in Schedule RC–L, item 1. The instructions for this item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the bank has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the bank is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, the agencies have found that some banks have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although the agencies consider these arrangements to be within the scope of the existing instructions for reporting commitments in Schedule RC–L, they believe that these instructions may not be sufficiently clear. Therefore, the agencies proposed to revise the instructions for Schedule RC–L, item 1, ''Unused commitments,'' to more clearly and completely explain the arrangements that should be reported in this item.

All three bankers' organizations submitting comments on the proposed Call Report revisions specifically addressed the proposed instructional clarification pertaining to unused commitments. One organization agreed that clarification is needed, but recommended that commitments to issue a commitment in the future, including those entered into even though the related loan agreement has not yet been signed, should be removed from the list of types of arrangements that the instructions would direct banks to report as unused commitments. The other two bankers' organizations also commented on the inclusion of this type of arrangement as an unused commitment. One organization expressed concern about reporting ''commitments that contain a relatively high level of uncertainty until a loan agreement has been signed or the loan has been funded with a first advance'' and the reliability of data on such commitments. The other organization stated that because some banks do not have systems for tracking such arrangements, the instructions should in effect permit banks to exclude commitment letters with an expiration date of 90 days or less. Finally, the first bankers' organization also recommended that the instructions for reporting unused commitments should state that amounts conveyed or participated to others that the conveying or participating bank is not obligated to fund should not be reported as unused commitments by the conveying or participating bank.

The agencies are continuing to evaluate these commenters' recommendations. As a consequence, the agencies will not revise the instructions for Schedule RC–L, item 1, ''Unused commitments,'' effective March 31, 2009, as proposed and the existing instructions for this Schedule RC–L item will remain in effect. Once the agencies conclude their deliberations on these recommendations and determine whether and how to revise the instructions for reporting ''Unused commitments'' in Schedule RC–L, item 1, they will publish their conclusions in a separate **Federal Register** notice and submit them to OMB for review and approval. If the instructions to Schedule RC–L, item 1, are revised, the clarifications to these instructions would take effect no earlier than December 31, 2009.

D. Exemptions from Reporting for Certain Existing Call Report Items

The agencies have identified certain Call Report items for which the reported data are of lesser usefulness for banks with less than $1 billion in total assets. Accordingly, the agencies proposed to exempt such banks from completing the following Call Report items effective March 31, 2009:

- Schedule RI, Memorandum item 2, ''Income from the sale and servicing of mutual funds and annuities (in domestic offices)'';
- Schedule RC–B, Memorandum items 5.a through 5.f, ''Asset-backed securities,'' on the FFIEC 031 report;[8]
- Schedule RC–L, item 2.a, ''Amount of financial standby letters of credit conveyed to others''; and
- Schedule RC–L, item 3.a, ''Amount of performance standby letters of credit conveyed to others.''

One commenter, a bank insurance consultant, objected to the agencies' proposal to exempt banks with less than $1 billion in total assets from reporting Schedule RI, Memorandum item 2, ''Income from the sale and servicing of mutual funds and annuities (in domestic offices),'' stating that this item should be preserved in all bank Call Reports. This commenter also stated that the agencies had not explained how they had determined that the collection of this Call Report item from banks in this size range is of lesser usefulness. This commenter added that by eliminating the reporting of this income information for these banks, ''we will lose our sole window into community banks' mutual fund and annuity activities.''

Memorandum item 2 was added to Schedule RI of the Call Report in 1994. At that time, the agencies collected limited information on banks' noninterest income. However, since 2001, the agencies have significantly expanded the amount of detailed information they collect on noninterest income in recognition of the increasing importance of such income to banks' earnings. As a result, all banks, regardless of size, currently report the amount of ''Fees and commissions from securities brokerage'' and ''Fees and commissions from annuity sales'' in Schedule RI, items 5.d.(1) and 5.d.(3), each quarter. Item 5.d.(1) specifically includes a bank's income from the sale and servicing of mutual funds. Thus, in general, the income that a bank reports in Schedule RI, Memorandum item 2, will have been included in these two noninterest income items in the body of Schedule RI. However, although the bank insurance consultant stated that as of ''June 30, 2008, more banks with less than $1 billion in assets reported mutual fund and annuity income'' in Memorandum item 2 than reported eight other types of noninterest income in the body of Schedule RI,'' the consultant did not provide comparative

[8] On the FFIEC 041 report, banks with less than $1 billion in assets are currently exempt from completing these Memorandum items.

data for the number of such banks reporting ''Fees and commissions from securities brokerage'' or ''Fees and commissions from annuity sales.''

In addition, the agencies will continue to use the Call Report to identify banks that sell private label or third party mutual funds and annuities (Schedule RC–M, item 6) as well as banks managing assets held in proprietary mutual funds and annuities (Schedule RC–M, item 7). Furthermore, Call Report users within the agencies have indicated that Memorandum item 2 on ''Income from the sale and servicing of mutual funds and annuities'' is regarded as being of lesser usefulness than the noninterest income items with which it overlaps (items 5.d.(1) and 5.d.(3) of Schedule RI). Accordingly, after considering the views expressed by the bank insurance consultant, the agencies have reaffirmed that the existing Call Report income statement items for ''Fees and commissions from securities brokerage'' and ''Fees and commissions from annuity sales'' are sufficient to meet their ongoing needs for income data on these types of activities from banks with less than $1 billion in total assets and that such banks should be exempt from separately reporting ''Income from the sale and servicing of mutual funds and annuities'' beginning March 31, 2009.

The agencies received no comments specifically addressing the other Call Report items for which they proposed to exempt banks with less than $1 billion in assets from continued reporting and will implement these exemptions as of March 31, 2009, as proposed.

E. Quantifying Misstatements in the Call Report

The Glossary entry for ''Accounting Changes'' in the Call Report instructions includes a section on ''Corrections of Accounting Errors'' that provides guidance on reporting such corrections that is consistent with FASB Statement No. 154, *Accounting Changes and Error Corrections* (FAS 154). However, neither FAS 154 nor the Glossary entry for ''Accounting Changes'' specifies the appropriate method to quantify an error or misstatement for purposes of evaluating materiality.

In September 2006, the SEC staff issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (SAB 108),[9] which advises that the impact of correcting all misstatements on current year financial statements should be accomplished by quantifying an error under both the ''rollover'' and ''iron curtain'' approaches[10] and by evaluating the error measured under each approach. When either approach results in a misstatement that is material, after considering all relevant quantitative and qualitative factors, an adjustment to the financial statements would be required. Guidance on the consideration of all relevant factors when assessing the materiality of misstatements is provided in the SEC's Staff Accounting Bulletin No. 99, *Materiality* (SAB 99).[11] SAB 108 observes that when the correction of an error in the current year would materially misstate the current year's financial statements because the correction includes the effect of the prior year misstatements, the prior year financial statements should be corrected.

The agencies believe that the guidance in SAB 108 and SAB 99 represents sound accounting practices that all banks should follow for purposes of quantifying misstatements and considering all relevant factors when assessing the materiality of misstatements in their Call Reports. Accordingly, the agencies proposed to incorporate the guidance in these two Staff Accounting Bulletins into the section of the ''Accounting Changes'' Glossary entry on error corrections.

One banking organization supported the agencies' proposal for quantifying misstatements in the Call Report because it would provide a uniform approach for dealing with misstatements. The agencies will implement this instructional change as proposed.

F. Eliminating Confidential Treatment for Fiduciary Income, Expense, and Loss Data

An important public policy issue for the agencies has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having sufficient appropriate information about the financial condition and risks of banks. The Call Report, in particular, is widely used by securities analysts, rating agencies, and large institutional investors as sources of bank-specific data. Disclosure that increases transparency should lead to more accurate market assessments of individual banks' performance and risks. This, in turn, should result in more effective market discipline on banks.

Despite this emphasis on market discipline, the FFIEC and the agencies currently accord confidential treatment to the information that certain institutions report in Call Report Schedule RC–T, Fiduciary and Related Services, on fiduciary and related services income, expenses, and losses (items 12 through 18, items 19.a through 23, and Memorandum item 4). Approximately 400 institutions that exercise fiduciary powers and have either total fiduciary assets greater than $250 million or gross fiduciary and related services income greater than 10 percent of revenue report their fiduciary and related services income quarterly and their fiduciary and related services expenses and losses annually as of year-end. Around 200 institutions that exercise fiduciary powers, have total fiduciary assets greater than $100 million but less than or equal to $250 million, and do not meet the fiduciary income test mentioned above report their fiduciary and related services income, expenses, and losses annually as of year-end. An additional 1,000 institutions that exercise fiduciary powers, have total fiduciary assets of $100 million or less, and do not meet the fiduciary income test mentioned above are exempt from reporting their fiduciary and related services income, expenses, and losses.

Data on fiduciary and related services income, expenses, and losses (except for gross fiduciary and related services income, which is also reported in each institution's Call Report income statement) are the only financial information currently collected on the Call Report that is treated as confidential on an individual institution basis. Nevertheless, the agencies publish aggregate data derived from these confidential items. The agencies have accorded confidential treatment to the fiduciary services income data for individual institutions since it began to be collected in 1997. However, the agencies do not preclude institutions from publicly disclosing the fiduciary and related services income, expense, and loss data that the agencies treat as confidential.

The agencies originally applied this confidential treatment to the fiduciary

[9] SAB 108 can be accessed at *http://www.sec.gov/interps/account/sab108.pdf*. SAB 108 has been codified as Topic 1.N. in the SEC's Codification of Staff Accounting Bulletins.

[10] According to SAB 108, the rollover approach ''quantifies a misstatement based on the amount of the error originating in the current year income statement,'' which ''ignores the 'carryover effects' of prior year misstatements.'' In contrast, the ''iron curtain approach quantifies a misstatement based on the effects of correcting the misstatement existing in the balance sheet at the end of the current year, irrespective of the misstatement's year(s) of origination.''

[11] SAB 99 can be accessed at *http://www.sec.gov/interps/account/sab99.htm*. SAB 99 has been codified as Topic 1.M. in the SEC's Codification of Staff Accounting Bulletins.

and related services income, expense, and loss information because these data generally pertain to only a portion of a reporting institution's total operations and not to the institution as a whole. However, the agencies make publicly available on an individual bank basis the Call Report data they collect on income and expenses from foreign offices from banks with such offices where foreign activities exceed certain levels even though these data pertain to only a portion of these banks' total operations.

In addition, under the Uniform Interagency Trust Rating System, the agencies assign a rating to the earnings of an institution's fiduciary activities at those institutions with fiduciary assets of more than $100 million, which are also the institutions that report their fiduciary and related services income, expenses, and losses in Call Report Schedule RC–T. The agencies' evaluation of an institution's trust earnings considers such factors as the profitability of fiduciary activities in relation to the size and scope of those activities and the institution's overall business, taking this into account by functions and product lines. Although the agencies' ratings for individual institutions are not publicly available, the reason for rating the trust earnings of institutions with more than $100 million in fiduciary assets—its effect on the financial condition of the institution—means that fiduciary and related services income, expense, and loss information for these institutions is also relevant to market participants and others in the public as they seek to evaluate the financial condition and performance of individual institutions. Increasing the transparency of institutions' fiduciary activities by making individual institutions' fiduciary income, expense, and loss data available to the public should improve the market's ability to assess these institutions' performance and risks and thereby enhance market discipline. Accordingly, the agencies proposed to eliminate the confidential treatment for the data on fiduciary and related services income, expenses, and losses that are reported in Schedule RC–T beginning with the amounts reported as of March 31, 2009. Fiduciary and related services income, expense, and loss data reported in Schedule RC–T for report dates prior to March 31, 2009, would remain confidential.

One bankers' organization opposed eliminating the confidential treatment of fiduciary income, expense, and loss data, stating that the agencies' original reason for according confidential treatment to these data, *i.e.*, that these data generally pertain to only a portion of a reporting institution's total operations and not to the institution as a whole, still holds true. This commenter also cited significant competitive concerns with the proposed elimination of confidential treatment because making income, expense, and loss data publicly available ''may make it possible for competitors to deduce'' an individual institution's fee schedules. In addition, the bankers' organization believed that these publicly disclosed data may be subject to misinterpretation by market participants who would lack a proper understanding of the scope of the income, expense, and loss data reported in Schedule RC–T because fiduciary income and expenses are presented differently in institutions' audited financial statements prepared in accordance with GAAP. Therefore, this commenter believes that institutions' financial statements can satisfy market participants' needs for fiduciary income, expense, and loss data. Finally, this commenter stated that market participants may be confused or misled by the fiduciary expense and loss information because they would be unable to determine the source or specific fiduciary activity giving rise to the expense or loss.

Although the fiduciary income, expense, and loss data currently reported in Schedule RC–T and afforded confidential treatment apply only to a portion of an institution rather than an entire institution, all other income and expense data collected in the Call Report is publicly available, even when the data relates only to portions of an institution's activities. As previously mentioned, components of net income attributable to foreign offices are reported by banks with significant foreign activities and made publicly available. In addition, banks with significant trading activities have reported a publicly available year-to-date breakdown of the revenues generated by the trading portion of their activities, which discloses the net gains (losses) by type of exposure each quarter. The agencies believe that the likelihood that competing institutions will be able to deduce an individual institution's fee schedule for its fiduciary services from the fiduciary income data reported in Schedule RC–T is largely mitigated by the fact that, in general, as noted above, only larger trust institutions are required to report fiduciary income, expense, and loss data.[12] Smaller trust institutions are not required to report such data. Therefore, smaller trust institutions whose fee schedules for fiduciary services may potentially be more likely to be able to be deduced by competitors are not subject to the risk of unintended disclosure of their fee schedules.

The agencies also believe that the risk of misinterpretation of the fiduciary income, expense, and loss data is substantially reduced by the FFIEC's publication of detailed instructions for the preparation of Schedule RC–T, which are available to users of this schedule to assist them in understanding the scope of the reported fiduciary and related services data. Moreover, possible confusion about the source of losses is mitigated by the currently required reporting in Memorandum item 4 of Schedule RC–T of a breakdown of losses by type of fiduciary account, which is further segregated between managed and non-managed accounts. Finally, the Optional Narrative Statement section of the Call Report affords the management of trust institutions the ability to submit publicly available explanatory comments concerning their fiduciary income, expense, and losses.

Thus, the agencies continue to believe that the benefit of increased transparency from the full disclosure of fiduciary income, expense, and loss data will improve market discipline by enhancing the market's ability to assess institution-specific performance and risks. After carefully considering the comments on the public availability of fiduciary income, expense, and loss data reported in Schedule RC–T, the agencies are adopting the proposal to eliminate the confidential treatment of such data beginning with the data reported as of March 31, 2009.

III. Call Report Revisions Proposed for June 2009

The agencies received no comments on the following revisions that were proposed to take effect as of June 30, 2009, and therefore these revisions will be implemented as proposed:

- Holdings of collateralized debt obligations and other structured financial products by type of product and underlying collateral;
- Holdings of commercial mortgage-backed securities;
- Unused commitments with an original maturity of one year or less to

[12] Institutions with total fiduciary assets greater than $100 million as of the preceding December 31 and institutions with gross fiduciary and related services income greater than 10 percent of revenue for the preceding calendar year are required to report fiduciary income data quarterly or annually, depending on their assets and income, and fiduciary expense and loss data annually in Schedule RC–T.

asset-backed commercial paper conduits;

- Pledged loans and pledged trading assets;
- Collateral held against over-the-counter (OTC) derivative exposures by type of collateral and type of counterparty as well as the current credit exposure on OTC derivatives by type of counterparty (for banks with $10 billion or more in total assets);
- Investments in real estate ventures;
- Held-to-maturity and available-for-sale securities in domestic offices (for banks that have both domestic and foreign offices); and
- Whether the bank is a trustee or custodian for certain types of accounts or provides certain services in connection with orders for securities transactions regardless of whether the bank exercises trust powers, which will take the form of yes/no questions.

The agencies received one or more comments addressing each of the following proposed June 30, 2009, revisions:

- Real estate construction and development loans outstanding with capitalized interest and the amount of such interest included in income for the quarter (for banks with construction and development loan concentrations);
- Fair value measurements by level for asset and liability categories reported at fair value on a recurring basis (for banks that have $500 million or more in total assets, apply a fair value option, or are required to complete the Call Report trading schedule);
- Remaining maturities of unsecured other borrowings and subordinated notes and debentures;
- Past due and nonaccrual trading assets; and
- Credit derivatives by credit quality and remaining maturity and by regulatory capital treatment.

The comments related to each of these proposed revisions are discussed below along with the agencies' response to these comments.

A. Construction and Development Loans With Interest Reserves

In December 2006, the agencies issued final guidance on commercial real estate (CRE) loans, including construction, land development, and other land (C&D) loans, entitled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (CRE Guidance).[13] This guidance was developed to reinforce sound risk management practices for institutions with high and increasing concentrations of commercial real estate loans on their balance sheets. It provides a framework for assessing CRE concentrations; risk management, including board and management oversight, portfolio management, management information systems, market analysis and stress testing, underwriting and credit risk review; and supervisory oversight, including CRE concentration management and an assessment of capital adequacy.

In issuing the CRE Guidance, the agencies noted that CRE concentrations had been rising over the past several years and had reached levels that could create safety and soundness concerns in the event of a significant economic downturn. As a consequence, the CRE Guidance explains that, as part of their ongoing supervisory monitoring processes, the agencies would use certain criteria to identify institutions that are potentially exposed to significant CRE concentration risk. Thus, the CRE Guidance states in part that an institution whose total reported C&D loans is approaching or exceeds 100 percent or more of the institution's total risk-based capital may be identified for further supervisory analysis of the level and nature of its CRE concentration risk. As of March 31, 2008, approximately 28 percent of all banks held C&D loans in excess of 100 percent of their total risk-based capital.

A practice that is common in C&D lending is the establishment of an interest reserve as part of the original underwriting of a C&D loan. The interest reserve account allows the lender to periodically advance loan funds to pay interest charges on the outstanding balance of the loan. The interest is capitalized and added to the loan balance. Frequently, C&D loan budgets will include an interest reserve to carry the project from origination to completion and may cover the project's anticipated sell-out or lease-up period. Although potentially beneficial to the lender and the borrower, the use of interest reserves carries certain risks. Of particular concern is the possibility that an interest reserve could disguise problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement. For example, a C&D loan for a project on which construction ceases before it has been completed or is not completed in a timely manner may appear to be performing if the continued capitalization of interest through the use of an interest reserve keeps the troubled loan current. This practice can erode collateral protection and mask loans that should otherwise be reported as delinquent or in nonaccrual status.

Since the CRE Guidance was issued, market conditions have weakened, most notably in the C&D sector. As this weakening has occurred, the agencies' examiners have been encountering C&D loans on projects that are troubled, but where interest has been capitalized inappropriately, resulting in overstated income and understated volumes of past due and nonaccrual C&D loans. Therefore, to assist the agencies in monitoring C&D lending activities at those banks with a concentration of such loans, i.e., C&D loans (in domestic offices) that exceeded 100 percent of total risk-based capital as of the previous calendar year-end, the agencies proposed to add two new Call Report items. First, banks with such a concentration would report the amount of C&D loans (in domestic offices) included in the Call Report loan schedule (Schedule RC–C) on which the use of interest reserves is provided for in the loan agreement. Second, these banks would report the amount of capitalized interest included in the interest and fee income on loans during the quarter. These data, together with information that banks currently report on the amount of past due and nonaccrual C&D loans, will assist in identifying banks with C&D loan concentrations that may be engaging in questionable interest capitalization practices for supervisory follow-up.

One bank expressed agreement with the agencies' concerns about the disguising of problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement through the improper use of interest reserves on C&D loans. The bank also acknowledged that real estate market conditions have weakened in its market area since the agencies issued their CRE Guidance in December 2006. Although the bank stated that it has a concentration of C&D loans, as defined above, it reported that a recent review of its portfolio revealed that only a modest number of its C&D loan agreements included interest reserves. The bank also described its lending policies and controls over the approval of interest reserves in the original underwriting of a C&D loan and in the limited cases when the original loan had matured or was otherwise recast. It then stated that both the bank lender and its supervisory agency should focus their attention—and any regulatory reporting requirements—on situations when interest reserves are added to a loan after a development project is completed or ''when a project goes over budget or otherwise has completion

[13] 71 FR 74580, December 12, 2006.

issues.'' With respect to the two proposed items pertaining to C&D loans with interest reserves, the bank noted that its loan system does not currently capture the required data and adding this capability to the loan system by the proposed June 30, 2009, effective date would likely be difficult, which would mean that the data would have to be compiled manually until system changes are in place.

In its comments, the bank concurred with the agencies' statement that the practice of including interest reserves as part of the original underwriting of a C&D loan is common. Although this bank may have a modest number of C&D loans with interest reserves and states that it controls the use of such reserves, the agencies remain concerned about the inappropriate capitalization of interest on C&D loans through the use of interest reserves. Potentially inappropriate interest capitalization is not limited to situations where interest reserves are added to a C&D loan after its originally scheduled maturity date or in connection with a restructuring of the loan. Inappropriate interest income recognition may also occur when budgeted interest reserves that were determined to be appropriate at the inception of the loan based on a project's original development and sale or lease-up plans continue to be used after construction has been substantially curtailed or has ceased and collection of all principal and interest on the loan is in doubt. In addition, a bank may loosen its policies and controls over the recognition of interest income on C&D loans through the use of interest reserves.

The agencies acknowledge that at some banks with C&D loan concentrations, only a limited portion of such loans may provide for the use of interest reserves. Nevertheless, the agencies believe that all banks with such concentrations should report the proposed data on loans with interest reserves to enable them to monitor this lending activity and detect changes in the extent to which such banks' C&D loans provide for the use of interest reserves. As noted above, the new and existing C&D loan data will also assist in identifying banks whose use of interest reserves may warrant supervisory follow-up. Accordingly, after considering the bank's comment, the agencies have decided to implement the proposed new items for the amount of C&D loans with interest reserves and the amount of capitalized interest included in income for the quarter as of June 30, 2009, as proposed. Banks with C&D loan concentrations are reminded that they are permitted to report reasonable estimates for these two amounts in the June 30, 2009, Call Report, which will provide them with additional flexibility in making any necessary systems changes. Finally, banks with C&D loan concentrations may choose to provide explanatory comments about their C&D loans with interest reserves in the Optional Narrative Statement section of the Call Report and these comments will be publicly available.

B. Fair Value Measurements

Effective March 31, 2007, the banking agencies began collecting information on certain assets and liabilities measured at fair value on Call Report Schedule RC–Q, Financial Assets and Liabilities Measured at Fair Value. Currently, this schedule is completed by banks with a significant level of trading activity or that use a fair value option. The information collected on Schedule RC–Q is intended to be consistent with the fair value disclosures and other requirements in FASB Statement No. 157, *Fair Value Measurements* (FAS 157).

Based on the banking agencies' ongoing review of industry reporting and disclosure practices since the inception of this standard, and the reporting of items at fair value on Schedule RC, Balance Sheet, the agencies proposed to expand the data collected on Schedule RC–Q in two material respects.

- First, the agencies proposed to expand the detail on Schedule RC–Q to (1) collect fair value information on all assets and liabilities reported at fair value on a recurring basis in a manner consistent with the asset and liability breakdowns on Schedule RC, (2) add totals to capture total assets and total liabilities for items reported on the schedule, (3) modify the existing items for ''other financial assets and servicing assets'' and ''other financial liabilities and servicing liabilities'' to collect information on ''other assets'' and ''other liabilities'' reported at fair value on a recurring basis (including nontrading derivatives and loan commitments), and (4) add separate disclosures for those components of ''other assets'' and ''other liabilities'' greater than $25,000 and exceeding 25 percent of the total fair value of ''other assets'' and ''other liabilities,'' respectively.
- Second, the agencies proposed to extend the requirement to complete Schedule RC–Q to all banks that reported $500 million or more in total assets at the beginning of their fiscal year while retaining the schedule's current applicability to all banks that (1) have elected to account for financial instruments or servicing assets and liabilities at fair value under a fair value option or (2) are required to complete Schedule RC–D, Trading Assets and Liabilities.

One bankers' organization commented that ''[c]ommunity banks have long been concerned about the application of fair value accounting to their financial statements'' and urged the agencies to use the increased data to be collected in Schedule RC–Q ''to carefully study the impact of this controversial accounting methodology'' because it ''often does not reflect the reality of community banking.'' In proposing the revisions to Schedule RC–Q, the agencies stated that additional data will enable them to more accurately assess the impact of fair value accounting and fair value measurements for safety and soundness purposes. This objective is consistent with the recommendation from this bankers' organization concerning the manner in which the agencies should use these fair value data. Thus, the agencies will implement the revisions to Schedule RC–Q effective June 30, 2009, as proposed.

C. Maturity Distributions of Unsecured Other Borrowings and Subordinated Debt

As part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted depositor preference legislation that elevated the claims of depositors in domestic offices (and in insured branches in Puerto Rico and U.S. territories and possessions) over the claims of general unsecured creditors in a bank failure. When a bank fails, the claims of general unsecured creditors provide a cushion that lowers the cost of the failure to the Deposit Insurance Fund (DIF) administered by the FDIC. The greater the amount of general unsecured creditor claims, the greater the cushion and the lower the cost of the failure to the DIF.

At the time the agencies issued their proposed revisions to the Call Report in 2008, the FDIC was considering proposing an adjustment to the risk-based assessment system so that insured depository institutions with greater amounts of general unsecured long-term liabilities will be rewarded with a lower assessment rate. The FDIC has since issued proposed amendments to its risk-based assessment system that include an unsecured debt adjustment that would lower an institution's base assessment rate.[14]

Because the Call Reports lack information regarding the remaining

[14] 73 FR 61560, October 16, 2008.

maturities of unsecured ''other borrowings'' and subordinated notes and debentures, the agencies proposed to collect this information in the Call Report so that the FDIC would be able to implement an unsecured debt adjustment. One bankers' organization expressed support for the proposed collection of this information to facilitate this risk-based assessment adjustment, indicating that the reporting of this additional data ''would be reasonable and would not be unduly burdensome.'' The agencies will implement the new items for reporting data on the remaining maturities of unsecured other borrowings and subordinated debt beginning June 30, 2009, as proposed.

D. Trading Assets That Are Past Due or in Nonaccrual Status

Currently, the agencies do not distinguish past due and nonaccrual trading assets from other assets on Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. The agencies proposed to replace Schedule RC–N, item 9, for ''Debt securities and other assets'' that are past due 30 days or more or in nonaccrual status with two separate items: item 9.a, ''Trading assets,'' and item 9.b, ''All other assets (including available-for-sale and held-to-maturity securities).'' These items would follow the existing three-column breakdown on Schedule RC–N that banks utilize to report assets past due 30 through 89 days and still accruing, past due 90 days or more and still accruing, and in nonaccrual status. Item 9.a would include all assets held for trading purposes, including loans held for trading. Collection of this information would allow the agencies to better assess the quality of assets held for trading purposes, and generally enhance surveillance and examination planning efforts.

The agencies also proposed to expand the scope of Schedule RC–D, Trading Assets, Memorandum item 3, ''Loans measured at fair value that are past due 90 days or more,'' to include loans held for trading and measured at fair value that are in nonaccrual status. This change was intended to provide for more consistent treatment with the information that would be collected on Schedule RC–N and with the disclosure requirements in FASB Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*.

One bankers' organization stated that it believed that disclosure requirements regarding the delinquency and nonaccrual status of trading securities is not particularly meaningful given that these securities are marked to market through earnings. As a consequence, credit risk is already incorporated into the market price of each trading security. The organization further stated that the nonaccrual concept traditionally has not been applied to trading securities, which makes the proposed reporting of such data costly and difficult to implement. Accordingly, this commenter recommended against adding the proposed disclosure requirements regarding the delinquency and nonaccrual status of trading securities.

The agencies are continuing to evaluate this commenter's recommendation. Therefore, the agencies will not implement the revisions to Schedule RC–N, item 9, and Schedule RC–D, Memorandum item 3, effective June 30, 2009, as had been proposed. These items will remain in their current form while the agencies consider the proposed reporting changes in light of this banking organization's comment. When the agencies conclude their deliberations on these proposed disclosure requirements and determine whether and how to proceed with them, they will publish their conclusions in a separate **Federal Register** notice and submit them to OMB for review and approval. If Schedule RC–N, item 9, and Schedule RC–D, Memorandum item 3, are revised, these reporting changes would take effect no earlier than December 31, 2009.

E. Enhanced Information on Credit Derivatives

Effective for the March 2006 Call Report, the agencies revised the information collected on credit derivatives in Schedules RC–L, Derivatives and Off-Balance Sheet Items, and RC–R, Regulatory Capital, to gain a better understanding of the nature and trends of banks' credit derivative activities. Since that time, the volume of credit derivative activity in the banking industry, as measured by the notional amount of these contracts, increased steadily through March 31, 2008, rising to an aggregate notional amount of $16.4 trillion as of that date. The aggregate notional amount has since declined slightly. Call Report data further indicate that the credit derivative activity in the industry is highly concentrated in banks with total assets in excess of $10 billion. For these banks, credit derivatives function as a risk mitigation tool for credit exposures in their operations as well as a financial product that is sold to third parties for risk management and other purposes.

The agencies' safety and soundness efforts continue to place emphasis on understanding and assessing the role of credit derivatives in bank risk management practices. In addition, the agencies' monitoring of credit derivative activities at certain banks has identified differences in interpretation as to how credit derivatives are treated under the agencies' risk-based capital standards. To further the agencies' safety and soundness efforts concerning credit derivatives and to improve transparency in the treatment of credit derivatives for regulatory capital purposes, the agencies proposed to revise the information pertaining to credit derivatives that is collected on Schedules RC–L, RC–N (Past Due and Nonaccrual Loans, Leases, and Other Assets), and RC–R.

In Schedule RC–L, item 7, ''Credit derivatives,'' the agencies proposed to change the caption of column A from ''Guarantor'' to ''Sold Protection'' and the caption of column B from ''Beneficiary'' to ''Purchased Protection'' to eliminate confusion surrounding the meaning of ''Guarantor'' and ''Beneficiary'' that commonly occurs between the users and preparers of these data. The agencies also proposed to add a new item 7.c to Schedule RC–L to collect information on the notional amount of credit derivatives by regulatory capital treatment. For credit derivatives that are subject to the agencies' market risk capital standards, the agencies proposed to collect the notional amount of sold protection and the amount of purchased protection. For all other credit derivatives, the agencies proposed to collect the notional amount of sold protection, the notional amount of purchased protection that is recognized as a guarantee under the risk-based capital guidelines, and the notional amount of purchased protection that is not recognized as a guarantee under the risk-based capital standards.

The agencies also proposed to add a new item 7.d to Schedule RC–L to collect information on the notional amount of credit derivatives by credit rating and remaining maturity. The item would collect the notional amount of sold protection broken down by credit ratings of investment grade and subinvestment grade for the underlying reference asset and by remaining maturities of one year or less, over one year through five years, and over five years. The same information would be collected for purchased protection.

In Schedule RC–N, the agencies proposed to change the scope of Memorandum item 6, ''Past due interest rate, foreign exchange rate, and other commodity and equity contracts,'' to

include credit derivatives. The fair value of credit derivatives where the bank has purchased protection increased significantly to over $500 billion at March 31, 2008, as compared to a negative $10 billion at March 31, 2007. Thus, the performance of credit derivative counterparties has increased in importance. The expanded scope of Memorandum item 6 on Schedule RC–N would include the fair value of credit derivatives carried as assets that are past due 30 through 89 days and past due 90 days or more.

In Schedule RC–R, the agencies proposed to change the scope of the information collected in Memorandum items 2.g.(1) and (2) on the notional principal amounts of ''Credit derivative contracts'' that are subject to risk-based capital requirements to include only (a) the notional principal amount of purchased protection that is defined as a covered position under the market risk capital guidelines and (b) the notional principal amount of purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The scope of Memorandum item 1, ''Current credit exposure across all derivative contracts covered by the risk-based capital standards,'' would be similarly revised to include the current credit exposure arising from credit derivative contracts that represent (a) purchased protection that is defined as a covered position under the market risk capital guidelines and (b) purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The agencies also proposed to add new Memorandum items 3.a and 3.b to Schedule RC–R to collect the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Consistent with the information currently reported in Memorandum item 2.g, the agencies proposed to collect this present value information with a breakdown between investment grade and subinvestment grade for the rating of the underlying reference asset and with the same three remaining maturity breakouts.

No comments were received on any of the agencies' proposed reporting revisions pertaining to credit derivatives described above, except for a comment from a bankers' organization on the proposal to collect data on Schedule RC–R relating to the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Accordingly, the agencies will implement all of the proposed credit derivative reporting changes—other than the proposed new Schedule RC–R items for present value data—as of June 30, 2009, as proposed. With respect to the present value data, the bankers' organization requested that the agencies clarify the impact of this proposed reporting requirement on a bank's risk-based capital calculations. The agencies are continuing to consider this comment and the proposed collection of present value data for certain credit derivatives. Therefore, the agencies will not add Memorandum items 3.a and 3.b to Schedule RC–R to collect this present value information effective June 30, 2009, as had been proposed. When the agencies conclude their deliberations on the bankers' organization's comment and the proposed present value data items, they will publish their conclusions in a separate **Federal Register** notice and submit any new reporting requirements to OMB for review and approval. If Memorandum items 3.a and 3.b are added to Schedule RC–R, this new reporting requirement would take effect no earlier than December 31, 2009.

IV. Discussion of Revisions Proposed for December 2009

Schedule RC–T, Fiduciary and Related Services, collects data on:

- Fiduciary and related assets by type of fiduciary account, with the amount of assets and number of accounts reported separately for managed and non-managed accounts;
- Fiduciary and related services income by type of fiduciary account and expenses, including fiduciary settlements, surcharges, and other losses by type of fiduciary account;
- Managed assets held in personal trust and agency accounts by type of asset;
- Corporate trust and agency accounts; and
- The number of collective investment funds and common trust funds and the market value of fund assets by type of fund.

FDIC-insured banks that exercise fiduciary powers and have fiduciary assets or accounts and uninsured limited-purpose national trust banks (trust institutions) must complete specified sections of Schedule RC–T either quarterly or annually (as of December 31) depending on the amount of their total fiduciary assets as of the preceding calendar year-end and their gross fiduciary and related services income for the preceding calendar year. Since its addition to the Call Report at year-end 2001, Schedule RC–T has not been revised. During this time period, significant growth has occurred in both the assets in managed and non-managed fiduciary accounts at trust institutions. The agencies have monitored the growth in fiduciary activities and trends in this area, both from data collected in Schedule RC–T and through the examination process, and have determined that certain data should be added to Schedule RC–T to enable the agencies to better evaluate the trust activities of individual trust institutions and the industry as a whole. Accordingly, the agencies proposed to implement revisions to Schedule RC–T as of December 31, 2009, that would affect the types of fiduciary accounts for which fiduciary assets and income are reported and the types of assets and fiduciary accounts for which managed assets are reported. The agencies also proposed to collect data on debt issues in default under corporate trusteeships.

One bankers' organization submitted comments on the proposed changes to Schedule RC–T. This commenter requested that the effective date for the proposed changes to Schedule RC–T be extended from December 31, 2009, to December 31, 2010, in order to provide vendors whose systems track the data reported in this schedule additional time for system programming revisions. The bankers' organization indicated that vendors are currently devoting programming resources to changes necessitated by the joint Securities and Exchange Commission and Federal Reserve Board Regulation R—Exceptions for Banks from the Definition of Broker in the Securities Exchange Act of 1934. This commenter also stated that some banks use multiple systems to track the default status of debt issues under corporate trusteeships and that moving to a single system of record for tracking these debt issues would impose significant costs and require a longer implementation period than proposed.

After carefully considering this organization's comment, the agencies have decided to retain the December 31, 2009, effective date for the proposed changes. The agencies are not requiring that trust institutions change from their use of multiple systems for corporate trusteeships or that they develop a single system of record for such trusteeships. In addition, the agencies note that banks are to start complying with Regulation R beginning the first day of their fiscal year commencing after September 30, 2008 (i.e., January 1, 2009, for most institutions), which implies that programming changes should be complete or nearing completion. Furthermore, as previously stated, the agencies' policy is to permit

banks to provide reasonable estimates for any new or revised Call Report item as of the report date for which the new or revised item is initially required to be reported. The ability to report reasonable estimates applies to the Schedule RC–T revisions that will be implemented as of December 31, 2009, which will afford trust institutions and their vendors additional time—either one quarter or one year, depending on the item and the frequency with which a particular institution must submit Schedule RC–T—to complete any necessary systems changes.

The agencies received no comments on the following revisions to Schedule RC–T that were proposed to take effect as of December 31, 2009, and therefore these revisions will be implemented as proposed:

- Breaking out foundations and endowments as well as investment advisory agency accounts as separate types of fiduciary accounts in the schedule's sections for reporting fiduciary and related assets and income;
- Expanding the breakdown of managed assets by type of asset to cover all types of fiduciary accounts; and
- Adding items for the market value of discretionary investments in proprietary mutual funds and the number of managed accounts holding such investments.

The agencies received comments from one bankers' organization addressing each of the following other proposed revisions to Schedule RC–T:

- Adding items for Individual Retirement Accounts (IRAs), Health Savings Accounts (HSAs), and similar accounts included in fiduciary and related assets;
- Revising the manner in which discretionary investments in common trust funds and collective investment funds are reported in the breakdown of managed assets by type of asset and adding new asset types to this breakdown of managed assets; and
- Adding items for the number and principal amount outstanding of debt issues in substantive default for which the institution serves as indenture trustee.

The comments related to each of these proposed revisions are discussed below along with the agencies' response to these comments.

A. IRAs, HSAs, and Other Similar Accounts

IRAs, HSAs, and other similar accounts represent a large category of individual benefit and retirement-related accounts administered by trust institutions for which the agencies do not collect specific data. At present, data for retirement-related accounts is included in the totals reported for ''Other retirement accounts'' and ''Custody and safekeeping accounts'' in the Fiduciary and Related Assets section of Schedule RC–T (items 5.c and 10). Significant growth in IRAs and HSAs administered by trust institutions is expected. IRAs, HSAs, and other similar accounts for individuals have risk characteristics that differ from employee benefit plans covered by the Employee Retirement Income Security Act. To identify trust institutions experiencing significant changes in the number of and market value of assets in these types of accounts for supervisory follow-up and to monitor both aggregate and individual trust institution growth trends involving these accounts, the agencies proposed to add a new item 13 to the Fiduciary and Related Assets section of Schedule RC–T to capture data on IRAs, HSAs, and other similar accounts included in recaptioned item 5.c, ''Other employee benefit and other retirement-related accounts'' and renumbered item 11, ''Custody and safekeeping accounts.''

In its comment on this change, the bankers' organization recommended that the data proposed to be reported in new item 13, ''Individual Retirement Accounts, Health Savings Accounts, and other similar accounts,'' should be reported instead in a new separate subitem of recaptioned item 5, ''Employee benefit and retirement-related trust and agency accounts,'' in the Fiduciary and Related Assets section of Schedule RC–T. In addition, the commenter requested clarification of how IRA, HSA, and other similar accounts held outside the trust department and in the retail side of an institution should be reported in Schedule RC–T, recommending that these accounts be excluded from Schedule RC–T.

At present, IRAs, HSAs, and similar accounts that are solely custody and safekeeping accounts are reported in existing item 10, ''Custody and safekeeping accounts.'' Custody and safekeeping accounts are not considered fiduciary accounts per se and are excluded from ''Total fiduciary accounts'' reported in item 9 of Schedule RC–T. For this reason, the agencies do not believe that IRAs, HSAs, and similar accounts should be aggregated and reported in a new subitem of item 5, ''Employee benefit and retirement-related trust and agency accounts,'' which is reserved for fiduciary accounts. Therefore, the agencies are implementing new item 13, ''Individual Retirement Accounts, Health Savings Accounts, and other similar accounts,'' as proposed.

Regarding the reporting of IRAs, HSAs, and other similar accounts maintained outside the trust department and in the retail side of the institution, the agencies reiterate that only those activities offered through a fiduciary business unit should be reported in Schedule RC–T. Therefore, IRAs, HSAs, and other similar accounts not offered through a fiduciary business unit of an institution should not be reported in Schedule RC–T.

B. Changes to the Types of Assets Reported in the Breakdown of Managed Assets Held in Fiduciary Accounts by Asset Type

The agencies reviewed the types of managed assets for which trust institutions currently report a breakdown of such assets by market value in Memorandum item 1 of Schedule RC–T. In this regard, discretionary investments in common trust funds (CTFs) and collective investment funds (CIFs) are not separately reported at present in Memorandum item 1. Instead, trust institutions currently are required to allocate the underlying assets of each CTF and CIF attributable to managed accounts to the individual line items for the various types of assets reported in Memorandum item 1. The agencies have found this current method of reporting investments in CTFs and CIFs to be misleading, confusing, and burdensome for trust institutions. It requires institutions to segregate the underlying assets of each CTF and CIF by asset type, rather than following the more straightforward approach of reporting the total value of managed accounts' holdings of investments in CTFs and CIFs. Therefore, the agencies proposed to end the current method of reporting these investments in Memorandum item 1 by adding a new Memorandum item 1.h for investments in CTFs and CIFs. This new asset type would enable the agencies to collect data that actually reflects the investment choices of discretionary fiduciaries, i.e., investing in a fund rather than an individual asset, while simplifying the reporting of these investments.

In its comment on this proposed change, the bankers' organization asked whether both the accounts holding units in CTFs and CIFs and the CTFs and CIFs themselves should be reported in the Fiduciary and Related Assets section of Schedule RC–T and whether double counting of CTF and CIF units and CTFs and CIFs will result. The agencies note that only the value of units in CTFs and CIFs held in fiduciary accounts should

be reported in the Fiduciary and Related Assets section of RC–T. When such units are held by a managed fiduciary account, the value of the units will be reported in new Memorandum item 1.h. Look-through reporting of the underlying assets of CTFs and CIFs in Memorandum item 1 is being eliminated. Double counting of CTF and CIF assets will be avoided by limiting the reporting of the underlying assets of CTFs and CIFs to existing Memorandum item 3, ''Collective investment funds and common trust funds,'' in Schedule RC–T.

At present, the asset type for ''common and preferred stocks'' in Memorandum item 1 includes not only these stocks, but also all investments in mutual funds (other than money market mutual funds, which are reported separately), private equity investments, and investments in unregistered and hedge funds. Investments in mutual funds (other than money market mutual funds) have long been reported with common and preferred stocks. However, over time, these investments have gone from being a relatively minor investment option for managed fiduciary accounts to being one of the most significant asset types for managed fiduciary accounts.

As a consequence, the agencies lack specific data on discretionary investments in mutual funds (other than money market mutual funds) despite their distinctive differences from investments in individual common stocks. Given these differences and the growth in mutual fund holdings in managed fiduciary accounts, the agencies proposed to add two new subitems to Memorandum item 1 to collect data on investments in equity mutual funds and in other (non-money market) mutual funds separately from common and preferred stocks. None of the comments the agencies received specifically addressed the proposed new subitems for mutual funds in Memorandum item 1, which the agencies will implement as proposed.

Investments in hedge funds and private equity have grown rapidly since the implementation of Schedule RC–T in 2001, with large institutional investors, e.g., large pension plans, increasing their allocation to these types of investments in order to increase portfolio returns and pursue absolute return strategies. As mentioned above, these types of investments are currently reported as ''common and preferred stocks'' in Memorandum item 1. However, given their unique characteristics and risks, the increasing role such investments are having in managed fiduciary portfolios, and the agencies' need to monitor the volume of these investments across the trust industry and at individual trust institutions, the agencies also proposed to modify Memorandum item 1 by adding a new subitem in which trust institutions would report investments in unregistered funds and private equity held in managed accounts. As proposed, these investments first would have been reported in the subitem for investments in common and preferred stocks, which is a component of Memorandum item 1.o, ''Total managed assets held in fiduciary accounts,'' but then these investments would have been separately disclosed in new Memorandum item 1.p of Schedule RC–T.

In its comment letter, the bankers' organization suggested that investments in unregistered funds and private equity and investments in common and preferred stocks be reported as separate components of ''Total managed assets held in fiduciary accounts,'' which would eliminate the need for the former type of investments to be included in two subitems of Memorandum item 1 of Schedule RC–T. The agencies agree with this suggestion and are revising Memorandum item 1 to exclude investments in unregistered funds and private equity from the subitem for investments in common and preferred stocks. Instead, each type of investment will be reported as a separate component of ''Total managed assets held in fiduciary accounts,'' with the subitems within Memorandum item 1 renumbered accordingly.

The bankers' organization also requested that the agencies clarify the definition of ''private equity investments'' for purposes of reporting such investments within Memorandum item 1 of Schedule RC–T and explain whether investments in closely-held family businesses should be reported as ''private equity investments.'' In general, for the purposes of Memorandum item 1, private equity investments is an asset class consisting of purchased equity securities in operating companies that are not publicly traded on a stock exchange or otherwise registered with the SEC under federal securities laws. Investments in closely-held family businesses, however, would not be reported as ''private equity investments'' if such investments represented in-kind transfers to a fiduciary account of securities in a closely-held family business or an increase in a fiduciary account's percentage ownership of an existing closely-held family business whose securities are held in the account. Such investments in closely-held family businesses would be reported in the subitem for miscellaneous assets within Memorandum item 1 of Schedule RC–T.

C. Corporate Trust and Agency Accounts

Trust institutions currently report the number of corporate and municipal debt issues for which the institution serves as trustee and the outstanding principal amount of these debt issues in Memorandum item 2.a of Schedule RC–T. One of the major risks in the area of corporate trust administration involves debt issues that are in substantive default. A substantive default occurs when the issuer fails to make a required payment of interest or principal, defaults on a required payment into a sinking fund, files for bankruptcy, or is declared bankrupt or insolvent.

The occurrence of a substantive default significantly raises the risk profile for an indenture trustee of a defaulted issue. Thus, to monitor and better understand the risk profile of trust institutions serving as an indenture trustee for debt securities and changes therein, the agencies proposed to require trust institutions to report the number of such issues that are in substantive default and the principal amount outstanding for these issues.

In its comment letter, the bankers' organization suggested clarifications to the scope of the proposed new reporting requirements for debt securities in substantive default for which an institution is serving as indenture trustee. The commenter recommended that the term ''substantive default'' should mean that an event of default for an issue of securities has actually been declared by the trustee with notice to investors. In addition, the bankers' organization recommended that events of default should include both technical and payment defaults. This commenter also proposed that issues in a cure period should not be reported as being in substantive default, and, in the case of private placement leases, no substantive default should be reported when the trustee is required to delay or waive the declaration of an event of default unless requested to do so in writing and no such request has been made. The commenter further suggested that, once the trustee's duty with respect to a defaulted issue is completed, the issue no longer should be reported as defaulted. Finally, the commenter requested that the agencies confirm that ''amount outstanding'' means the unpaid principal balance or certificate balance.

After carefully considering these recommendations, the agencies agree that issues should not be reported as

being in substantive default until such default has been declared by the trustee. Similarly, issues should not be reported as being in substantive default during a cure period, provided the bond indenture provides for a cure period. Private placement leases where the trustee is required to delay or waive the declaration of an event of default, unless requested in writing to make such declaration, should not be reported as being in substantive default, provided such written request has not been made. Once a trustee's duties with respect to an issue in substantive default have been completed, the issue should no longer be reported as being in default. As for the meaning of the term ''amount outstanding,'' the instructions for Memorandum item 2 of Schedule RC–T currently refer to the par value of outstanding debt securities, except for zero-coupon bonds for which ''amount outstanding'' is described as the maturity amount. As suggested by the commenter, the instructions for Memorandum item 2 will be revised to clarify that ''amount outstanding'' for debt instruments means the unpaid principal balance. For trust preferred securities, the ''amount outstanding'' would be the redemption price.

The agencies, however, have decided not to treat events of technical default as falling within the scope of the proposed new Memorandum item 2.a.(1) on debt issues in default for which the institution serves as trustee. As previously stated, the agencies believe that a substantive default significantly raises the risk profile for an indenture trustee of a defaulted issue. In such cases, every action or failure to act by the trustee is intensely scrutinized by bondholders of the defaulted issue. Moreover, an event of substantive default often results in the incurrence of significant expense and the distraction of managerial time. For these reasons, the agencies proposed to collect data on substantive defaults on issues for which the reporting trust institution serves as trustee under a bond indenture. The agencies do not believe that events of technical default necessarily entail the heightened degree of risk that substantive defaults do. Therefore, the agencies do not consider it necessary to monitor such events on a system-wide basis. The agencies will continue to monitor the occurrence of events of technical default and an institution's administration of such events during periodic on-site examinations.

In addition, the agencies proposed to revise the instructions for reporting on corporate trust accounts to state that issues of trust preferred stock for which the institution is trustee should be included in the amounts reported for corporate and municipal trusteeships. No comments were received on this aspect of the corporate trust reporting proposal and the agencies will implement this instructional change as proposed.

F. Instructional Clarifications

The agencies proposed to clarify the instructions for reporting:

- The managed and non-managed assets and number of managed and non-managed accounts for defined contribution plans and defined benefit plans in items 5.a and 5.b of Schedule RC–T, respectively, by indicating that employee benefit accounts for which the trust institution serves as a directed trustee should be reported as non-managed accounts; and
- The number of, and market value of assets held in, collective investment funds and common trust funds in Memorandum item 3 by stating that the number of funds should be reported, not the number of assets held by these funds, the number of participants, or the number of accounts invested in the funds.

No comments were received on these proposed instructional clarifications, which will be implemented as proposed.

However, the bankers' organization requested clarification of the term ''managed assets'' as used in Schedule RC–T. The organization asked whether discretionary accounts in which the management of all or a portion of the account is delegated to a registered investment advisor, whether affiliated or unaffiliated with the reporting trust institution, should be considered managed or non-managed assets. The organization also sought clarification as to whether non-discretionary accounts that are managed by a registered investment advisor would be reported as custody or non-managed accounts.

The current instructions for Schedule RC–T state that an account is considered managed if the institution has investment discretion over the assets of the account. Investment discretion is defined as the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of a fiduciary related account. An institution that delegates its authority over investments and an institution that receives delegated authority over investments are both deemed to have investment discretion. Therefore, whether an account where investment discretion has been delegated to a registered investment adviser, whether affiliated or unaffiliated with the reporting institution, should be reported as a managed account depends on whether the delegation of investment authority to the registered investment adviser was made pursuant to the exercise of investment discretion by the reporting institution. If so, the account is deemed to be a managed account by the reporting institution. Otherwise, the account would be a non-managed account for purposes of Schedule RC–T.

V. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: January 22, 2009.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, January 22, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 22nd day of January, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–1734 Filed 1–27–09; 8:45 am]

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Federal Register

Wednesday,
January 28, 2009

Part II

Office of Personnel Management

Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Agriculture, Food Safety and Inspection Service; OMB Final Decisions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Agriculture, Food Safety and Inspection Service

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Chapter 47 of title 5, United States Code, authorizes the U.S. Office of Personnel Management (OPM), directly or in agreement with one or more agencies, to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in human resources policy or procedures result in improved Federal human resources management. The Food Safety and Inspection Service (FSIS), the U.S. Department of Agriculture (USDA), and OPM will test a results-based, competency-linked pay-for-performance system that is combined with a simplified, pay banding classification and compensation system. The final project plan has been approved by FSIS, USDA, and OPM.

DATES: This demonstration project will be implemented on July 19, 2009.

FOR FURTHER INFORMATION CONTACT: Food Safety and Inspection Service: Laurie Lindsay, Director, HR Demonstration Project Staff, (202) 720–7983, 1400 Independence Avenue, SW., Room 2134 South Building, Washington, DC 20250. Office of Personnel Management: Patsy Stevens, Systems Innovation Group Manager, (202) 606–1574, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7456, Washington, DC 20415.

SUPPLEMENTARY INFORMATION:

1. Background

FSIS is a premier public health regulatory agency that continually invests in human capital. In order to continue agency success in performing a range of food safety, food defense, and public health regulatory missions over the next decade, FSIS requires an innovative human resources (HR) system. FSIS has an expanded mission responsibility for food defense, biosecurity, and public health science and is no longer just limited to the inspection of meat, poultry, and processed egg products. FSIS must assure science-based development and execution of policy and must also emphasize risk-oriented assessment, planning, analysis, inspection, and management activities.

This growing list of advanced public health functions along with the USDA strategic human capital plan and the President's Management Agenda requires FSIS to manage human capital in the 21st century very aggressively. In the absence of enabling legislation, FSIS made the decision in 2005 to pursue the opportunity to propose a demonstration project in collaboration with OPM in an effort to address its human capital challenges.

As the Federal Government's workforce as a whole continues to experience significant changes, FSIS has been confronted with several considerable challenges that are driving the need for this demonstration project. FSIS faces critical shortages in the number of positions, such as public health veterinarians and other scientists and are threatened with the task of replacing an aging workforce. The average age of mission-critical employees is between 50 and 53 years old. The retirement eligibility within the next ten years is near 50 percent.

FSIS also continues to experience shortages and turnover in spite of our aggressive use of recruitment and retention incentives (over $1 million annually), use of direct hire, and a new entry level for public health veterinarians. Moreover, almost 375,000 Federal employees outside of USDA are covered by alternative performance-based pay systems. As more Federal employees transition into new pay systems, USDA will be one of the largest executive departments still covered by a less performance sensitive pay system which will significantly impede its ability to recruit and retain employees.

Through the demonstration project, FSIS will be able to take a proactive role in finding solutions to all of these challenges in order to attract the best qualified candidates and to retain and motivate its current workforce. It will also simplify the current classification system for greater flexibility in classifying work and paying employees; improve hiring by allowing FSIS to compete more effectively for high quality employees through the judicious use of higher entry salaries; reaffirm the performance management and rewards system for improving individual and organizational performance; eliminate automatic pay increases (*i.e.*, annual adjustments that normally take effect the first pay period beginning on or after January 1) by making pay increases performance sensitive, so that only Fully Successful and higher performers will receive payouts and the best performers will receive the largest payouts; test the effectiveness of multi-grade pay bands in recruiting, advancing, and retaining employees; and improve the retention of high-performing employees in developmental positions by testing the use of developmental pay increases to recognize the faster progression that can occur in these positions.

By implementing a modern human resources management system that supports and protects this critical role in public health, food safety, and food security, FSIS will be better prepared in serving the general public by ensuring the nation's commercial supply of meat, poultry, and processed egg products are safe, wholesome, and correctly labeled and packaged.

2. Overview

The FSIS Demonstration Project proposal was approved by OPM and publicized in the **Federal Register** on May 9, 2008. Prior to publication, the agency's program managers were briefed on the various management and mission implications of the project. There was a 30-day public comment period immediately following publication of the proposed demonstration project plan in the **Federal Register**, culminating in a public hearing on June 26, 2008, held at USDA Headquarters in Washington, DC. A total of 44 individuals, mostly FSIS employees, and 1 employee organization submitted written comments and questions. Six individuals and the employee organization provided comments and asked questions at the public hearing. Many of the commenters offered multiple comments and questions. A total of 154 different comments and questions were received, with several of them duplicative. Comments covered a number of different management and HR topical areas, and in some cases, pertained to more than one topic. The topics that received the largest number of comments and questions related to management accountability (41), pay and pay pools (27) and staffing (24). Other topical issues receiving numerous comments/questions related to performance management (21), employee relations (8), and labor relations (7). There were seven comments on career paths and pay bands and two comments on project evaluation. An additional 17 comments and questions did not fall into one of the above topical areas. Every comment and question received was extremely important, as each helped to focus on an examination of the project plan and better understand the long-term management and employee implications of the project. Public comments and

questions often served as the catalyst to raising additional questions on the part of top management. As a result of public comments received, FSIS has made some refinements to its plan and a few clarifying editorial and textual changes as well.

3. Summary of Comments and Responses

Comments are arranged into nine broad topical areas (including a miscellaneous ''other'' category) that correspond to the topics identified in the previous section and are presented not in an order dictated by the number of comments received, but in an order that reflects the logic of the project's design scheme and contents (*i.e.*, in a topical order beginning with pay banding and classification, and devolving through pay, staffing, management accountability, performance management, employee relations, labor relations, and project evaluation). FSIS' responses are generic summaries relative to major issues raised by comments and questions rather than point-by-point responses.

(a) Career Paths and Pay Bands

There were several comments about the proposed career paths and pay band structure including a question about the occupational series covered by the Administrative, Professional and Scientific Career Path and comments that pay bands have an adverse impact on career development and on supervisors.

(1) Career Paths

Comments: A question was raised concerning the occupational series coverage for the Administrative, Professional, and Scientific Career Path. There was a perception that General Schedule (GS) Compliance Investigator positions (GS–1801) were not covered by this career path since this occupation does not have a positive education requirement and a path is needed to include investigators. There was also a comment questioning the placement of employees whose jobs do not require higher educational credentials or a positive education requirement in the same band with employees whose jobs do require credentials and a positive education.

Response: In designing the proposed career paths, FSIS wanted to take the broadest approach that made sense given the nature of the work performed and the nature of the occupations requiring this work. The broader the design approach, the more employees are treated alike and the simpler it is to administer pay banding. Employee equity and systemic simplification are key goals of this project. In deciding on the original career path proposal, FSIS opted to essentially build its career paths using OPM's white-collar ''PATCO'' categories. The PATCO scheme encompasses extremely broad groupings of white-collar occupational categories, largely based on differences in the nature of work and the essential job knowledge required to successfully perform the work (for instance, whether work accomplishment requires certain educational attainments, or analytical ability, or subject-matter competencies, and so on). OPM defines each distinct occupational job series according to whether work is professional (''P''), administrative (''A''), technical (''T''), clerical (''C''), or falls into a miscellaneous others (''O'') category. The Administrative, Professional, and Scientific Career Path includes all jobs that have a 2-grade interval career progression (*e.g.*, GS–5, 7, 9, 11, 12, 13, 14, 15, or any combination of these grades). This career path includes professional positions with a positive education requirement as well as administrative positions without a positive education requirement like GS–1801 Compliance Investigators. Using one career path for these 2 categories of positions ensures the greatest flexibility in pay setting and pay progression. The decision to include professional and administrative jobs in the same career paths was based on a review of the current classification and pay progression for most jobs in FSIS. Educational credentials are important for many of FSIS' occupations and will continue to be used to make minimum qualifications determinations, where needed, upon appointment. For jobs where education can be substituted for experience, it may also positively impact the pay band a candidate is ultimately placed in at appointment. In FSIS, jobs that are either ''administrative'' or ''professional'' have very similar grade level progressions under the GS system, irrespective of the educational requirements of the job. Therefore, it was determined that these positions would be appropriately placed together in the Administrative, Professional, and Scientific Career Path which includes all jobs that have a 2-grade interval progression (*e.g.*, GS–5, 7, 9, 11, etc.) in order to facilitate system simplification without compromising classification principles.

(2) Pay Band Structure

Comments: Several comments were made regarding the pay band structure that FSIS has established. There was a question as to whether FSIS plans to include non-supervisory employees and supervisory employees within the same bands. There was also a comment that banding grades together such as GS–12 and 13, or GS–13 and 14, without competition would be similar to a demotion for employees currently classified at the higher of the two grades. There was a question regarding why senior executives were not covered under the project and a comment that eligibility to the Senior Executive Service Candidate Development Program (SESCDP) could be compromised because of the proposed supervisory pay band structure. One commenter also stated that employees with disabilities, especially those with targeted disabilities, tended to be in the lower pay bands in other Federal pay-for-performance programs and that the elimination of within-grade increases and implementation of pay banding would adversely impact pay progression for employees with disabilities.

Response: FSIS reviewed the proposed pay band structure and determined that no changes are needed. With respect to placing supervisory and non-supervisory employees in the same band, FSIS notes that the proposed project did not originally include supervisors in the same band as non-supervisory employees unless the non-supervisory technical work of the position is at a higher level than the supervisory work. This occurs principally with the GS–701 Supervisory Public Health Veterinarian working in a plant where the supervisory work is at a lower level than the nonsupervisory veterinary work performed. Therefore, they are placed in the non-supervisory Pay Band 4 of the Administrative, Professional, and Scientific Pay Band. The *FSIS Demonstration Project Policies and Procedures Handbook* will provide guidance to further clarify the bands and career paths.

FSIS disagrees with the comment that combining two or more grades in one band is similar to a demotion as several gradations of work are possible within a given pay band. In essence, pay banding assumes that different employees in the same career path, job series, and pay band of a properly classified position can operate at differing levels—within reason—due to variations in incumbent maturity (seasoning) and performance. In this circumstance, equal pay for equal work is not compromised even though one employee may be earning higher pay than another employee in the same pay band. In a fundamental respect, this is no different than disparities in pay that occur between employees in the same

properly classified GS–13 position where one employee is earning a GS–13, step 2, rate and another is earning a GS–13, step 9, rate. In addition, it is felt that the new pay band structure is actually more consistent with the manner in which most positions operate. For example, the main difference between two grades may simply be that supervisory controls are closer and/or guidelines are more defined at the lower grade. Oftentimes, classifiers use ''statements of difference'' which indicate that the position performs the same work at both grades but supervisory controls are closer and guidelines are more defined. Combining two grades into a single pay band, for example, shifts the focus of the employee pay advancement from position classification and merit promotion criteria to performance-based pay criteria, one of the chief goals of the demonstration project. This shift in pre-eminence from classification and promotion criteria to performance also occurs in the examples of other pay bands in other occupational career paths, and serves in the aggregate to underscore how pay-banding intrinsically enhances the potential effectiveness of a performance-based pay system. As the demonstration project is reviewed and evaluated over time, OPM and FSIS will make decisions on whether an adjustment to the band structure is warranted.

With respect to the comment that eligibility for the SESCDP may be compromised by the proposed pay band placement structure, FSIS disagrees and does not believe the band structure will adversely impact an employee's eligibility for the program. The USDA SESCDP program is open to those who are at the GS–14 or 15 grade level or equivalent who are interested in applying and meet the qualifications requirements for the program. The proposed pay band 5S and 6S in the Administrative, Professional, and Scientific Career Path is considered equivalent to the GS–13/14 and GS–15 under the General Schedule, respectively. FSIS applicants who convert into the project at Band 5S or 6S and later apply to the SESCDP should not be adversely impacted by being in either pay band. Ultimately, as with any competitive process, the quality of the employee's application package which includes job experience will weigh most heavily in the final selection decision. It is also noted that Senior Executive Service employees are not participating in the project as they are already covered under a pay-for-performance system.

In response to the comment that employees with disabilities tend to be at the lower pay bands in Federal pay-for-performance programs and will be adversely impacted by pay banding and the elimination of within-grade increases, FSIS noted that employees in lower pay bands will be entitled to the same benefits and opportunities for performance payouts made available to employees in the highest pay bands. Although there was no reference cited for the data source that employees with disabilities tend to be at lower pay bands in other pay-for-performance systems, a review of the FSIS workforce data shows that as of September 2008, 71 percent of FSIS employees with disabilities are at the GS–12 through GS–15 grade levels. Therefore, with a substantive number of FSIS employees with disabilities converting into the project at the highest pay bands, the comment is not substantiated for FSIS. It is noted that although within-grade increases will no longer be in effect, pay increases will be provided to all employees who perform at the ''Fully Successful'' level or higher, including employees with targeted disabilities. The demonstration project will uphold the enduring values and principles upon which the Civil Service was founded and protect employee's fundamental rights and due process. While the demonstration project provides broad discretion in managing and compensating employees, actions taken by supervisors and managers must be based on legitimate, non-discriminatory reasons and protections against Prohibited Personnel Practices remain. Plans are being made to distribute a handout outlining the Merit System Principles, Prohibited Personnel Practices, and protections against employment discrimination on the bias of national origin, religion, color, race, age, sex, sexual harassment, and mental or physical disability. Finally, individuals who believe they have been discriminated against will have the same legal rights and protections under the demonstration project as were afforded to them prior to conversion.

(b) Pay and Pay Pools

Comments: Several commenters posed questions seeking further clarification on how FSIS plans to establish, manage, and fund the pay pools. For instance, there were comments and questions relating to the size of the pay pools, composition of the pools, and share distribution. Concern was also raised regarding the adequacy of pay pool funding and the possible disparity of funds in the pools of differing sizes. There was a concern that there is a potential for employees in different pools with the same rating receiving different pay increases.

Comments were also received about the merits of denying a pay increase to employees who receive a performance rating of less than ''Fully Successful.'' Commenters also expressed the opinion that a ''cost of living'' increase should not be dependent upon performance; therefore, employees should be entitled to receive the increases associated with the annual general increase and locality pay increase regardless of performance. One commenter inquired whether a lump sum is given to employees receiving an ''Outstanding'' rating who are at the top of the band or if the money and shares are returned to the pay pool for recalculation and distribution. Another commenter provided a recommendation for handling pay when the employee is at the maximum rate of the pay band by suggesting that FSIS provide an option for either issuing a monetary award or diverting the pay into the employee's retirement account.

Some commenters had concerns that loyalty or longevity or seniority would no longer be factors in determining pay, and the security that longevity afforded employees would be jeopardized under the demonstration project.

Response: A significant component of the demonstration project is the performance pay pool which will be used to distribute performance pay increases. The pay pool helps ensure that ratings, shares, and performance payouts are distributed consistently and fairly among those who are in the pool. Once a pay pool is established, employees in the pay pool who receive a performance rating of ''Fully Successful'' or higher are eligible for a performance payout. Employees in the pay pool whose performance ratings are below ''Fully Successful'' will not be eligible to receive an increase.

In designing the pay pools, several factors will be taken into consideration. While there is no formula in place to determine the size and composition of a pay pool, there are some general guidelines and benchmarks that FSIS considered in determining the best approach for the agency to take when designing pay pools. A pay pool that is too large can be cumbersome to manage. FSIS will provide guidance on the structure and administration of the pay pools in the *FSIS Demonstration Project Policies and Procedures Handbook.*

In terms of funding the pay pools, funds that would otherwise have been paid to demonstration project employees for the annual GS pay adjustment, within-grade increases, and quality step increases will be used to

fund the pay pools. Since FSIS historically allocates monies to the salary budget on an annual basis for each of these increases, it is anticipated that FSIS will have sufficient funds for the pay pools. Since these increases have been historically paid to FSIS employees, the funding for these increases will continue under the demonstration project; however, the funds will be distributed differently in the form of performance pay increases.

With respect to the concern regarding the possible disparity of funds in the pools of differing sizes and the potential for employees to be inequitably rewarded, FSIS notes that it will use the same percentage factor for all pay pools. Thus, the pay increase is a function of the rating and the share distribution within the pool. The higher the rating, the more shares an employee will receive. For example, those rated ''Outstanding'' receive 9 shares, ''Superior'' receive 6 shares, and ''Fully Successful'' receive 4 shares. No shares are given to those with less than a ''Fully Successful'' rating. However, this does not imply a forced distribution of ratings, which is not allowed under this project. To help facilitate a fair rating distribution under a pay-for-performance system, it will be extremely important for ratings to be well-supported by documentation and specific results, and for standards to be clear and measure what is important in the job and what it takes to exceed a performance element. Ensuring ratings are fair and consistent across program areas and that the agency is able to support meaningful levels of performance payouts to its top performers is a key tenet of the demonstration project. FSIS will run mock pay pools and provide training and the required tools to managers and employees detailing their responsibilities in this process.

FSIS recognizes that clarification on locality pay is required in response to the points raised by commenters on how locality pay increases are handled for employees receiving a less than ''Fully Successful'' performance rating. Locality pay is added to the employee's base pay and serves as a means to equalize pay between the Federal and the private sector markets in a given area. It is not a cost of living increase (COLA) as some may perceive. FSIS believes that in order to fully test a pay-for-performance system and promote a performance culture, all pay increases should be tied to performance and that employees who fail to meet the basic requirements of their job and receive a Level 2 (Marginal) or Level 1 (Unacceptable) rating should not receive a pay increase, including a pay increase resulting from a locality pay increase. Employees will not lose pay but rather will not receive a pay increase. That is, the employee's base salary will be reduced to offset any locality pay increase. However, it is recognized that employees may improve their performance before the end of the next appraisal period as a result of the successful completion of a formal improvement plan. Therefore, if performance improves to the ''Fully Successful'' or higher level, the employee is entitled to the same percentage of basic pay increase resulting from the annual general pay increase that the employee would have been guaranteed to receive if rated ''Fully Successful'' at the time the performance payout was denied. This pay increase will be applied prospectively. FSIS has clarified the language in this **Federal Register** Notice to emphasize that the employee is not eligible for a performance payout based on share distribution until the next January and the adjustment is not retroactive.

With respect to how pay will be handled for employees who are at the maximum rate of the pay band, FSIS considered various options. Since a pay increase is most advantageous to the employee, it was decided these increases would be reserved for those employees who receive an ''Outstanding'' rating. The plan has a provision which extends the maximum rate of a pay band up to 5 percent for employees rated ''Outstanding'' so that the top performers who are at the normal maximum rate of the band may receive a performance pay increase. Those employees rated ''Superior'' or ''Fully Successful'' who are at the normal maximum rate of the band will receive the performance payout as a lump-sum payment. (Employees rated ''Outstanding who are at the maximum rate of the 5 percent band extension also will receive the performance payout as a lump-sum payment.) Therefore, funds will not be reallocated within the pay pool as one commenter questioned, and all pay pool funds will be distributed based on the shares allocated to those with performance ratings of ''Fully Successful'' or higher.

FSIS did not adopt the suggestion to provide the option for diverting additional employee earnings into a retirement account. This can already be initiated by an employee through contributions to the Thrift Savings Plan, in addition to the automatic biweekly contributions made to their retirement account.

In response to concerns that there is a need to recognize seniority and time spent on the job with automatic increases, FSIS believes that length of service is not as critical as the employee's performance and their contribution to the mission of the agency. FSIS wants to encourage a performance culture and a high performing organization that recognizes and compensates employees for their accomplishments rather than how long they have been in a position. Certainly with longevity comes valuable experience and institutional knowledge. FSIS acknowledges that it has many experienced employees who have made significant contributions over many years with the agency. The demonstration project is designed to recognize and retain these experienced high performers by providing more meaningful increases. Under a pay-for-performance system, FSIS does not believe that pay increases should be based solely on seniority nor should they be automatic or equivalent, particularly if an employee is performing at a less than ''Fully Successful'' level. This is contrary to the goals of the project.

It should be noted that in some instances those long-term employees who are good performers and are currently at higher steps in their GS grades will actually see greater benefits under the demonstration project. The demonstration project eliminates the GS system requirement of waiting periods for receiving a pay increase. Specifically, under the demonstration project, employees who receive a rating of ''Fully Successful'' or higher will receive an annual performance pay increase until they reach the applicable maximum rate. In essence, employees with longevity may receive pay increases sooner than they would under the GS system with-grade increase waiting period requirements. In addition, employees who receive an ''Outstanding'' rating and are at the band maximum may have the top of the pay band extended by up to 5 percent in order to receive a pay increase above the normal band maximum. In the GS system, employees at step 10 of their grade are no longer able to receive further pay increases at their grade level. FSIS wants to attract and retain a strong workforce and improve workforce performance.

(c) Staffing

Comments: Most of staffing comments concerned the impact of employee conversion to pay banding on pre-existing promotion potential as a result of having successfully competed for a

''career ladder'' position. Commenters also expressed concerns that employees who convert into the demonstration project and have already served a period of time in their grade might have to begin a new 52-week waiting period to qualify for a band promotion.

There were also questions about being confined to a band with little room for advancement and promotion within or to a higher band. Some believe that the move to a demonstration project will not have a benefit on recruitment or retention of employees. One commenter expressed the opinion that the demonstration project, particularly with its recruitment features, will be a discriminatory system toward current employees if new hires are placed at a higher salary than current employees. In addition, an employee group commented that the demonstration project should be patterned after the U.S. Department of Veterans Affairs (VA) title 38 pay system, which incorporates longevity pay and special pay for public health medical professionals.

There was a question concerning whether the demonstration project would cover intermittent veterinary medical officers since they do not receive performance ratings. Other comments concerned pay setting upon conversion back to the GS in the event that the demonstration project is not made permanent. It was suggested that FSIS track employee salaries and set GS pay based on what employees would have received if they had remained under the GS.

Response: Clearly, the feature of the plan that generated a high number of comments concerned career ladders and promotions, warranting some clarification to those sections of the notice. There will continue to be ''career ladders'' under FSIS' pay banding system, although instead of grade intervals, there will be band intervals. A ''laddered'' position is simply a position advertised during recruitment at a certain level of full performance that is filled through selection and appointment at a lower pay band.

Under the demonstration project plan, FSIS will have authority to ''grandfather'' employees who become covered by the demonstration project at the time it initially takes effect and who have not reached their full promotion potential at that time. On an annual basis (until full promotion potential is reached), FSIS will compare each ''grandfathered'' employee's base rate entitlement under the demonstration project to the projected base rate they would have received under the GS system (taking into account general increases, regular within-grade increases, and career-ladder promotion increases). If the projected GS base rate is higher than the base rate determined under the normal demonstration project rules, and if the employee meets any additional required conditions established by FSIS, the employee will receive a special pay adjustment so that his or her payable base rate does not fall below the projected GS base rate. In other words, the projected GS base rate that would have been in effect on the specified annual date (as determined by FSIS) acts as a floor rate for the next 12 months. Even though the floor rate may be the payable rate, FSIS will continue to maintain the employee's normal base rate entitlement under the demonstration project as an alternative entitlement. While the ''grandfathering'' benefit is in effect, the normal base rate entitlement will be determined without regard to any GS floor rate that may be payable—that is, the GS floor rate is not used in applying pay adjustments under the demonstration project but is simply a separate entitlement or minimum guarantee for qualified employees. The ''grandfathered'' employee's normal base rate entitlement under the demonstration project will become payable if it exceeds the GS floor rate. This ''grandfathering'' benefit will cease to be applicable when the employee reaches his or her full promotion potential (as further described in the following paragraph). At that point, if the base rate established under this ''grandfathering'' authority is higher than the normal base rate established under the demonstration project, the base rate under the ''grandfathering'' authority will be converted into the employee's official base rate under the demonstration project.

''Full promotion potential'' is a traditional position classification and personnel staffing concept that will continue to have validity under FSIS' demonstration project, and it means the highest grade, or pay band, of a career-ladder position for which an incumbent previously competed under the Government's Merit System Principles and an agency's merit promotion plan. Once an FSIS employee who converted to pay banding under this demonstration project receives an in-band pay increase or promotion that takes him or her to a pay level equivalent to the highest GS grade in the formerly applicable career ladder, the employee will be considered to have reached his or her full performance potential and the ''grandfather'' provision will cease to apply. Future in-band pay increases for such an employee would then be based solely on performance, consistent with other employees. Of course, just as a GS employee is not guaranteed a career-ladder promotion without the supervisor's certification, the promotions and special ''grandfathered'' in-band increases for demonstration project employees will not be guaranteed, and they will be issued new performance plans with each pay increase. Additional terms and conditions of this ''grandfathering'' benefit will be published in the *FSIS Demonstration Project Policies and Procedures Handbook* that will implement this project plan.

In terms of meeting the proposed 52-week time in band requirement for promotion to the next higher band, FSIS has reevaluated this provision in light of the final rule issued on November 7, 2008, which eliminated the time-in-grade requirements. Promotions to the next higher band will be determined based on meeting the qualifications requirements for promotion to the next higher band and will not require employees to serve 52 weeks in the band if qualifications are met. Policies will be further defined in the *FSIS Demonstration Project Policies and Procedures Handbook* to ensure fair and consistent promotion decisions throughout FSIS.

FSIS disagrees with the comment that being placed into a pay band provides little room for advancement and promotion. Pay bands replace grades and in most cases simply provide a broader range of pay than a single grade currently does. As with grades, employees are not confined to one band and being in a band does not prevent employees from applying for promotional opportunities to a higher band or to a different career path with higher band potential. Promotions will continue to exist under the demonstration project. Bands offer greater pay potential to employees and are not designed to limit career advancement. Promotions will continue to be based on performance and promotional criteria that are established for the position. FSIS will continue to uphold Merit System Principles (and other personnel authorities) and will work to avoid Prohibited Personnel Practices as it currently does under the GS system. That will not change.

Recruitment and retention of a skilled workforce is important to FSIS and was one of the reasons FSIS decided to pursue a demonstration project to test a pay-for-performance system. The demonstration project better positions FSIS to be more competitive with other Federal Government agencies and the

private sector when recruiting new hires. Pay setting flexibilities allow FSIS to bring new hires to the agency at any point within the pay band based on the credentials and experience they bring to the agency. Pay for performance will also provide managers with the ability to fairly compensate current employees based on their performance and also help to align agency salaries with those in the more competitive labor markets. Employees who are rated at higher levels will receive larger payouts than employees rated at lower levels. Higher pay increases based on performance facilitates a performance culture and produces a high performing organization that achieves results. When designing the demonstration project, the recruitment and retention of employees in the FSIS public health veterinary occupation, which has experienced shortages in the last eight to ten years, was of particular concern. With respect to implementing a system which includes provisions for special pay and longevity pay, FSIS closely studied the features of the VA system. Because the focus of the demonstration project is to test pay-for-performance in a public health environment, FSIS is moving away from the current system's focus on longevity as the basis for all pay increases. FSIS felt that instituting longevity pay would be contrary to the purpose of the project. In terms of special pay, FSIS is exploring several options, including the use of retention incentives that are already in existence under title 5. For example, a group retention incentive could be authorized for public health veterinarians who have certain board certifications that are of significant value to the FSIS mission when such veterinarians are likely to leave the Federal service because the board certifications improve their marketability in the private sector. Over the life of the project, FSIS also may request that OPM establish a new staffing supplement for a category of FSIS employees for which there are staffing difficulties.

FSIS does not agree with the suggestion that employees' salaries should be tracked in order to set GS pay based on what employees would have received if they had remained under the GS. The project plan gives FSIS authority to establish the rules governing pay setting for employees who convert out of the demonstration project and move to a GS position. Those technical conversion-out rules will be provided in the *FSIS Demonstration Project Policies and Procedures Handbook* and will be forwarded to other Federal agencies should an FSIS employee move to a GS position in another agency. In general, demonstration project employees moving to a GS position, whether during the project or at its conclusion, will be converted to a GS-equivalent grade and rate before they leave the demonstration project and thus will be treated as GS employees under GS pay administration rules when setting pay in their new GS position. Employees will not lose pay upon conversion to the GS system should the demonstration project end. Employees may actually progress faster than they would have under the GS system because under a pay banding system rate ranges are generally broader, performance pay increases may be earned each year, pay increases may be given above the pay band maximum for Outstanding performers, and pay setting flexibilities may provide for higher entry rates.

With respect to the question regarding whether intermittent veterinary medical officers will participate in the demonstration project, FSIS decided to exclude these employees from the project because they are excluded from the performance management plan and do not have regular performance appraisals.

(d) Management Accountability

Comments: Perhaps no other topic generated so many comments as the topic of supervisory accountability. Most of the comments concerned the objectivity and consistency of performance appraisals and the recourse employees will have should they desire to appeal their performance ratings. A number of commenters expressed concern over fairness of performance ratings and supervisory caprice or favoritism in appraising employee performance. Some concerns were raised about performance appraisals not being completed on time during a rating cycle and the level of paperwork required by supervisors when an employee receives a ''Superior'' or ''Outstanding'' rating. A suggestion was made to add a provision to the regulation to permit employees to rate their supervisors.

Response: FSIS agrees with commenters that the performance management rating system must be fair and equitable. FSIS also agrees with commenters who state that employees should be rewarded based on their performance. The demonstration project has developed a series of safeguards and checks and balances to help ensure that the process is fair and consistent within organizational units.

One of the safeguards is the way the pay pool process has been structured which provides an added level of accountability and checks and balances to ensure that the ratings and supporting documentation are consistent across the pay pool. Employee accomplishment reports prepared by the employee, and supervisory rating justifications prepared by the rating supervisor, play a significant part in ensuring a fair and equitable performance management rating system. An accomplishment report will serve as a critical document in describing the employee's performance in accomplishing the agency's mission during the rating cycle. Employee ratings will be based on performance standards that have been established for the employee's position. Ratings will not compare one employee against another employee.

The demonstration project has been designed with a series of reviews to ensure employees are rated according to their level of performance. A first-level supervisor reviews an employee's accomplishment report and performance standards, in conjunction with other performance criteria, and provides a rating for an employee. Supervisors will be held accountable for the ratings they recommend for employees. The rating will be reviewed by a second-level supervisor and then the rating will be presented to the pay pool panel, consisting of FSIS management officials, who will evaluate and reconcile, if necessary, an organization's performance ratings. The pay pool panel will make the final decision on the performance ratings.

Employees who receive a rating of ''Fully Successful'' or higher are entitled to a performance payout. Employees whose performance is less than ''Fully Successful'' are not and will receive written notification, as well as have the right to request reconsideration of the rating. To support fairness and transparency for the program, employees have an opportunity to request reconsideration of rating by a management official other than the rating official.

Supervisors will also be under the demonstration project and will be held accountable for meeting the supervisory requirements of their position. One such requirement is the completion of performance appraisals within the designated timeframe for their employees and all associated paperwork that accompanies the appraisal. Disciplinary action can be taken if supervisors fail to meet the requirements of their positions, which includes performance management. FSIS did not add a provision to the project notice to permit employees to rate their supervisors. Under present

guidelines, feedback can be obtained in a variety of ways, to include employee feedback, surveys, etc.; therefore, a change is not necessary. FSIS encourages utilizing various feedback mechanisms available to assess management performance.

(e) Performance Management

Comments: Most of the comments received on performance management concerned the establishment of clear, measurable, and realistic performance standards to which employees would be rated. Most who commented felt that without good standards, a pay-for-performance system that is fair and equitable would be difficult to achieve. One commenter stated that FSIS had not met OPM-established performance management system requirements (*i.e.,* objective and measurable performance standards) and therefore questioned FSIS readiness for the demonstration project. Some commenters stated morale and teamwork will suffer and there will be a disincentive for employees to work together as teams because there may be competition among staff members for a limited amount of funds that are in the pay pool. Commenters expressed concern that employees rated against each other would create situations to improve individual performance at the expense of others. There were a couple of commenters who welcomed the pay-for-performance system as a means to be compensated for their high level of performance.

One commenter stated that a method, the In-Plant Performance System (IPPS), is not being used to measure performance. Commenters also expressed the importance of ensuring the availability of comprehensive and adequate training for employees, supervisors, and managers on all the various components of the demonstration project.

Response: FSIS agrees that clear, measurable performance standards are critical to the success of the demonstration project and has steadily worked on the requirements of the President's Management Agenda Scorecard and met OPM's requirements for an improved performance management system. During 2006, FSIS completed OPM's Performance Appraisal Assessment Tool (PAAT), covering ten major areas of focus on performance management, and was the first to receive a passing score within USDA. FSIS, more recently, completed a partial PAAT assessment and demonstrated that employee performance plans were strategically aligned, contained balanced credible measures, were results focused, and adequately distinguished between levels of performance. In this assessment, FSIS received a perfect score. FSIS continues to be a USDA and Federal agency leader in making improvements to the performance management system, similar to its leadership role in pursuit of additional human resources authorities. FSIS feels it is well-positioned to move forward with the demonstration project and, in fact, has met the requirements to do so.

Other important efforts also underway involve training. As outlined in the May 9, 2008 **Federal Register** Notice, FSIS is providing training to all participating employees, supervisors, and managers before the project is implemented and throughout the five-year life of the project. Supervisors and managers continue to receive extensive training in setting and communicating performance expectations, monitoring performance, and providing timely feedback. They will also receive training on the mechanics of the performance management system. Supervisors and managers will be held accountable for the effective management of the performance of the employees they supervise through performance expectations and appraisals of their own performance in this regard.

FSIS is also providing training in effective accomplishment writing for all employees before and throughout the life of the demonstration project. Classroom workshops, desk guides, CDs, and net conferencing tools will be utilized to provide employees with multiple training methods to reach out to the agency's physically dispersed workforce.

Performance management training has been and will continue to be offered to employees and supervisors. Employees are encouraged to ask questions about the standards and to ensure that the standards that have been established are compatible with their responsibilities.

Perhaps the biggest challenge the agency faces is earning and keeping the trust of its employees during this time of profound change, while ensuring that the demonstration project is not perceived as a disincentive. The demonstration project is not designed to pit employees against each other. Employees will be evaluated against their established performance standards and will not be evaluated and compared against the performance of other employees in the work unit. The effectiveness of every employee is enhanced by his or her ability to work effectively with others which in turn can ultimately impact his or her level of performance. There are generic elements identified in FSIS' Performance Management Plan that are used to evaluate an employee's interpersonal skills, including Customer Service, Teamwork, and a mandatory Personal Contacts element which can be used to promote teamwork and evaluate an employee's effectiveness in working with others. Certainly, FSIS will monitor and evaluate the performance management process throughout the project to ensure there is no adverse impact of this nature.

Supervisors need to evaluate an employee's performance based on the standards that have been established and must take into consideration all aspects of the individual's performance. There are several methods that are to be used to monitor and evaluate employee performance to include a review of work products and other supporting documentation and input related to work accomplishment, internal/external customer feedback, direct observation of performance, the employee's assessment of their own performance, etc. The IPPS is another tool used by supervisors to assess the employee's knowledge of his or her job requirements. IPPS applies to non-supervisory in-plant occupations. It is designed to provide supervisors with a structured process to look at specific elements of the job to identify, address, and correct areas where there is a need for improvement in performance and provide feedback to employees. According to FSIS Directive 4430.3 which outlines the policy on the IPPS system, supervisors should use IPPS data with other data and information about an employee's performance to determine the performance rating.

(f) Employee Relations

Comments: A few comments in this topical area concerned whether employees have the right to appeal or grieve their performance rating. Commenters expressed the point that the administrative grievance procedure is ineffective as there is a reluctance of managers to overturn decisions made by supervisors. Some felt that there needs to be a credible system of appeal that is apart from the current administrative grievance process. Commenters also expressed concern that FSIS already has many grievances and questioned FSIS' consideration of the impact the demonstration project would have on inspectors in districts where the grievance filings are already rather high.

Response: Under the demonstration project, there will be a reconsideration process that is separate from other appeal processes like the administrative grievance process. Employees will have the right to request reconsideration of their performance rating. These

procedures will be outlined in the *FSIS Demonstration Project Policies and Procedures Handbook* and will address how the process will work. In addition to the reconsideration process, employees who believe they have been treated unfairly have the same legal rights and protections under the demonstration project as under the GS system and also have the right to file a formal Equal Employment Opportunity (EEO) complaint.

With respect to the comment on grievances and their impact on inspection personnel, a decision was made to exclude the bargaining unit. Therefore, the demonstration project will have no effect on inspectors.

(g) Labor Relations

Comments: There were a few comments related to labor management to include a comment concerning the involvement of employee groups in the planning, development, and implementation of this demonstration project. There was also a comment that FSIS did not communicate the right of employees to unionize or give them the option to do so. Some members of the bargaining unit commented that it is hard to receive a higher rating because of the nature of their job where they work on the line. One commenter noted that the majority of the workforce, which primarily includes the bargaining unit employees, were not included. The commenter questioned how FSIS can exempt the majority of the workforce from the project.

Response: In the initial design of the system, FSIS formed a workgroup that was comprised of employees from all levels of the organization, several of whom were members of the employee groups. The draft **Federal Register** Notice issued on May 9, 2008, allowed for input and comment from employee groups. One group submitted both written and oral comments. FSIS values the opinions of its employees and welcomes input from its employee groups. Briefings and subsequent discussions were held with the leadership of the National Association of Federal Veterinarians and the Association of Technical and Supervisory Personnel employee groups to solicit questions and concerns during the comment period. With respect to the comment on communicating information on or providing employees with the option to unionize, FSIS notes that employees have the right to unionize, but it is not a management responsibility to communicate information on how to do so. As noted in other parts of this notice, the decision to exclude the bargaining unit was made in part due to the fact that no more than 5,000 employees may participate in a demonstration project. Since the bargaining unit comprises over 6,000 employees, FSIS decided to exclude this group. Therefore, the demonstration project will have no effect on the performance ratings, pay, or other incentives for bargaining unit employees.

(h) Evaluation

Comments: A few commenters noted the importance of evaluating the demonstration project in their comments concerning other topical areas. A couple of commenters, however, specifically addressed the topic of evaluation. One commenter pointed out that an evaluation of the GS system against the demonstration project, conducted by non-agency officials, would provide a fair and accurate assessment of the results. Another commenter expressed concern that the objectives of the demonstration project are not being met under the proposed structure. One commenter stated that FSIS is presenting the positive points and none of the adverse issues relating to the demonstration project.

Response: FSIS agrees that the evaluation portion of the Public Health Human Resources System (PHHRS) is a critical means of determining the impact on improving human resources management. Evaluation, a legal requirement of a demonstration project, will take place throughout the five-year demonstration project period. It will be conducted by an independent evaluator to assess whether the flexibilities of the proposed system will help FSIS better attract and retain employees, or whether FSIS would realize the same results had a change from the GS system to PHHRS not been made.

Over the five-year period, surveys, focus groups, and structured interviews with FSIS employees will be conducted as part of the evaluation process. FSIS will work with OPM to address issues that arise, especially any adverse impact issues that are identified during the evaluation period, and will apprise employees of any warranted changes or revisions. To ensure the goals and objectives of the demonstration project are being realized, FSIS has made some changes to its initial proposal of the demonstration project which can be found in section 4, ''Changes to Demonstration Project Plan,'' of this notice.

(i) Other

Comments: There were some general comments and observations that do not specifically relate to the FSIS demonstration project and therefore are not covered in this section. The comments in this category relate to a variety of topics that do not specifically fall under any of the other topical areas. These comments relate to timing of implementation especially during the election year; communication efforts and the lack of specificity in operational and implementation procedures; administrative burden; workload distribution; the option of employees voting to participate in the project; and the impact on retirement.

Response: All of these comments warrant a response. FSIS does not see the benefit of waiting to implement the demonstration project. By design, the demonstration project is an experiment and needs to be tried and tested over a five-year period of time. Delaying the project would not yield any benefits. Many things are supposed and anticipated, but few things are known for sure in advance. They need to be tried and tested.

It is understandable that some commenters found FSIS' proposed project plan vague and unclear in parts. FSIS' demonstration project plan, in both its proposed and final incarnations, is designed to mainly answer the ''what'' of a matter, not the ''how.'' This is why there have been many references in these responses, as well as in the text of the project plan, to the *FSIS Demonstration Project Policies and Procedures Handbook,* which will contain more details about the project's operating procedures. But this response is not to dodge the issues. Most of the comments received during the public comment period have been invaluable in guiding FSIS' development of its companion policies and procedures. By design, a demonstration project is an experiment. There is more than one way to execute and effect almost any feature of this experiment, and though modeling previous successful experiments and viable alternative personnel systems can be extremely useful, there are still mechanical subtleties and finer points of interpretation in matters of pay banding, staffing, and pay with which FSIS must come to terms. Having said this, it can be said that after many months of rigorous development and refinement, FSIS has gained competence and sureness about how to effectively execute the innumerable features and applications of this project. FSIS is developing guidelines and conducting training to aid managers, employees, and the human resources office in implementing the operational features of the project. It will be some time

following project implementation and employee conversion before FSIS is proficient in most demonstration project matters, though FSIS is taking great pains and care to ensure that start up and transition are implemented as smoothly as possible.

For a period of time beginning prior to the publication of the **Federal Register** Notice on May 9, 2008, to present, FSIS has followed a process of informing employees of the demonstration project through the employee newsletters and e-mails. A 30-day comment period followed the publication of the Notice, and OPM held a public hearing at the USDA Headquarters in June 2008 where individuals could comment on the system. FSIS has set up a mailbox on its intranet site for employees to submit questions and comments. In addition, agency publications, both in written and electronic format, have been regularly used to apprise employees of the status of the demonstration project and to provide answers to commonly asked questions and other pertinent information. Presentations were conducted for employees at headquarter and field locations and at various agency meetings and conferences. Throughout the life of the project, FSIS will continue to regularly inform employees of the status of the project and provide opportunities for employee comments.

FSIS does not intend to increase staff to handle the administrative workload under the demonstration project. Automation of several administration processes associated with the features of the project is being considered.

With respect to workload burden for supervisors, the responsibilities for managing employee performance are leadership responsibilities inherent in all managerial and supervisory jobs. These responsibilities are the same whether under a demonstration project or the current system. By setting goals and expectations for employees up front through the performance management process and communicating throughout the year, organizational performance can be improved and workload less burdensome. FSIS recognizes that for pay pool managers and others participating in that process, there will be additional responsibilities. However, with automated processes and training, FSIS will work diligently to prepare for a smooth transition which should facilitate the process.

FSIS does not agree that employees should vote on participating in the demonstration project. Because FSIS is experimenting with a pay banding and pay for performance system that, were it to be successful, would replace entire segments of the GS workforce, allowing employees to vote would be impractical, and more compelling, not in the best interest of efficient Government.

FSIS is not proposing to experiment with retirement benefits and laws, which cannot be waived under the demonstration project authority. Therefore, we disagree that the demonstration project will adversely impact employees under the Federal Employees Retirement System. Employment rules are often changed during the average career of a Federal employee to include provisions for additional flexibilities and modernization of the Civil Service system.

4. Changes to Demonstration Project Plan

What follows is a list enumerating the changes to FSIS' demonstration project and textual changes to the project plan. The changes are clarifying in nature and are not substantial or major. The page numbers referenced are those found in the May 9, 2008, **Federal Register** Notice. Some of the changes have been described in the preceding responses to specific comments. Other changes provide additional detail and clarification or correct technical problems.

(1) Page 26437: The Table of Contents is revised to reflect the addition of four new sections—VIII.A., Overview; VIII.B., Evaluation Models; VIII.C., Evaluation; and VIII.D., Method of Data Collection.

(2) Page 26437: Section I, Executive Summary, is rewritten to reflect FSIS' final project goals.

(3) Page 26438: Section II.A., Purpose, is revised to ensure consistency with the Executive Summary.

(4) Page 26439: Section II.D., Participating Organizations, is revised to exclude intermittent veterinary medical officers and to reflect a name change from Technical Service Center to Policy Development Division.

(5) Page 26439: Section II.E., Participating Employees, is revised to exclude intermittent veterinary medical officers.

(6) Page 26440: January 2008 data are superseded with September 2008 data in the table, ''Covered Employees by Occupational Series and Grade.''

(7) Page 26441: The description for the Administrative, Professional, and Scientific career path was modified, consistent with the FSIS response herein under the subsection for career paths and pay bands.

(8) Page 26443: Section III.A.9, Rate of Basic Pay Upon Promotion, is clarified.

(9) Page 26447: Section III.C.4, Employees Who Cannot Receive a Performance Pay Increase, is clarified.

(10) Page 26447: Section III.E.3, Promotions removes the time-in-band requirement.

(11) Page 26449: Section VIII, Project Evaluation, is rewritten to provide more detail on the evaluation framework and assessment criteria.

(12) Page 26449: Under section X, Waiver of Laws and Regulations Required, the chapter 51 waiver is revised to correct an error.

U.S. Office of Personnel Management.

Michael W. Hager,

Acting Director.

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I. Executive Summary

This project was designed by the U.S. Department of Agriculture (USDA), including the Food Safety and Inspection Service (FSIS), with participation of and review by the U.S. Office of Personnel Management (OPM). The goals of the demonstration project are to—

(1) Simplify the current classification system for greater flexibility in classifying work and paying employees;

(2) improve hiring by allowing FSIS to compete more effectively for high quality employees through the judicious use of higher entry salaries;

(3) reaffirm the performance management and rewards system for improving individual and organizational performance;

(4) eliminate automatic pay increases (*i.e.* annual adjustments that normally take effect the first day of the first pay period beginning on or after January 1) by making pay increases performance sensitive, so that only Fully Successful and higher performers will receive payouts and the best performers will receive the largest payouts;

(5) test the effectiveness of multi-grade pay bands in recruiting, advancing, and retaining employees;

(6) improve the retention of high-performing employees in developmental positions by testing the use of developmental pay increases to recognize the faster progression that can occur in these positions.

The demonstration project will modify the General Schedule (GS) classification and pay system by identifying several broad career paths, establishing pay bands which may cover more than one grade in each career path, eliminating longevity-based step progression, and providing for annual performance payouts based on performance. The proposed project will test (1) the effectiveness of multi-grade pay bands in recruiting, advancing, and retaining employees, and in reducing the processing time and paperwork traditionally associated with classifying positions at multiple grade levels and (2) the application of meaningful distinctions in levels of performance to the allocation of annual payouts. The project is scheduled for 5 years. However, with OPM's concurrence, the project may be extended if further testing and evaluation are warranted or may be terminated before the expiration of the 5-year period.

The project will test whether a results-based, competency-linked pay-for-performance system can be successful in USDA. Previous alternative pay systems that used competency models (*e.g.*, the Government Accountability Office (GAO) compensation system and the Department of Defense (DOD) Acquisition Workforce Demonstration Project) did not focus on missions or occupations related to public health or food defense. Moreover, the workforce covered by the demonstration project is predominantly supervisory (about 40%), and it is important to establish effective pay-for-performance policies and procedures for supervisory positions before extending such systems to large numbers of line worker positions throughout the Federal Government. Finally, a substantial number of the covered employees (approximately 30 percent) have working conditions that are dramatically different from other white-collar workers (*e.g.*, shift-oriented work in slaughter or meat processing facilities), including the requirement for substantial amounts of regularly-scheduled and intermittent overtime.

II. Introduction

A. Purpose

The purpose of the project is to test whether a results-based, competency-linked, pay-for-performance system and related innovations will produce successful results in a public health regulatory environment and occupations associated with public health and food defense.

B. Rationale for a New System

The USDA Strategic Human Capital Plan and the President's Management Agenda require FSIS to manage human capital in the 21st century very aggressively. FSIS must achieve comprehensive human capital goals for strategic workforce planning, learning and workforce development, recruitment and retention, and evolution of a highly effective performance culture.

The FSIS Strategic Plan calls for continued transformation of the existing workforce, which was recruited and trained during a time when food safety was considered a conventional inspection program governed by legislation such as the Federal Meat Inspection Act of 1906, the Poultry Products Inspection Act of 1957, the Wholesome Meat Act of 1967, the Wholesome Poultry Products Inspection Act of 1968, and the Egg Products Inspection Act of 1970. This legislation was enacted when food industry practices were characterized by carcass-by-carcass organoleptic inspection. To carry out its public health regulatory missions today, FSIS must assure science-based development and execution of policy and must also emphasize risk-oriented assessment, planning, analysis, inspection, and management activities. Also, FSIS must recruit, develop, retain, and accomplish life-cycle management for a workforce that is educated and skilled in public health, food defense, food safety, public education, and emergency-response systems, programs, practices, and technologies. In addition to inspecting poultry and meat, animals, poultry and meat products, and processed egg products, FSIS must accomplish a growing list of advanced public health functions to include conducting risk assessments to identify and evaluate the potential human health outcomes from the consumption of meat, poultry, and processed egg products.

At best, the personnel system that currently covers USDA and FSIS employees is based on 20th century assumptions about the nature of public service. Although the current Federal personnel management system is based on important core principles, those principles operate in an inflexible, one-size-fits-all system of defining work, hiring staff, managing people, assessing and rewarding performance, and advancing personnel. These inherent weaknesses make support of the FSIS mission complex, costly, and, ultimately, risky from the standpoint of public health. Currently, pay and the movement of personnel are pegged to outdated, narrowly-defined work definitions, hiring processes are cumbersome and high performers and low performers are generally paid alike. These systemic inefficiencies detract from the potential effectiveness of the public health workforce.

The challenges facing USDA and FSIS today to assure and improve the public health from farm to table require a workforce transformation. FSIS employees are being asked to assume new and different responsibilities, take more initiative, and be more innovative, agile, and accountable than ever before. It is critical that USDA and FSIS support the entire public health workforce with modern systems, particularly a human resources management system that supports and protects their critical role in public health, food safety, and food security.

C. Changes Required/Expected Benefits

The innovations of the project and their objectives are summarized below.

1. Pay Banding and Classification

Occupational groups will be placed in appropriate career paths, pay bands will replace grades, and agency pay band standards will replace OPM position classification standards. The classification system will be automated as much as possible through intranet-based classification tools, and authority will be delegated to line managers (at least one level below the Deputy Assistant Administrator level).

These changes are intended to simplify and speed up the classification process, make the process more serviceable and understandable, improve the effectiveness of classification decision-making and accountability, and facilitate pay for performance.

Pay bands, which generally correspond to multiple grade levels, provide larger classification targets that can be defined by shorter, simpler, and more understandable classification standards. This simpler system will be easier to automate, will require fewer resources to operate, and will facilitate delegation to line managers.

By providing broader and more flexible pay ranges for setting entry pay, pay banding will provide hiring officials with an important tool for attracting high-quality candidates and thus contribute to the objective of increasing the quality of new hires.

By providing more flexible pay progression based on performance, pay banding will give managers the ability to increase the pay of good performers to higher and more competitive levels, thus improving the retention of good performers. At the same time, the potential for higher pay increases for good performance, supported by the broader pay ranges of a pay banding system, will contribute to the objective of improving organizational and individual performance.

2. Staffing

Additional staffing tools will include such elements as flexible entry salaries, staffing supplements for employees in the applicable special rate categories, developmental pay increases, and more flexible pay increases associated with promotion.

These changes are intended to attract high-quality candidates and increase the retention of good performers. Flexible pay-setting for new hires is a recruiting tool that gives hiring officials greater flexibility to offer more competitive salaries to high-quality candidates, addressing the objective of improving the quality of new hires. This will be used in conjunction with existing recruitment and retention incentives under title 5.

3. Pay

The most important change in pay administration is the introduction of a pay-for-performance system. The pay-for-performance system will support several objectives. It will strengthen the organization's performance culture. It will promote fairness through the results-based, competency-linked, performance rating process. It will provide a motivational tool as well as a retention tool. As a motivational tool, the promise of higher pay increases for good performance encourages high achievement. As a retention tool, a pay-for-performance system allows the organization to quickly move the salaries of good performers to levels that are more competitive in the labor market. The promise of higher pay increases for good performance will encourage achievement and promote the objective of improved individual and organizational performance.

Under the pay-for-performance system, employee performance ratings will govern individual pay progression within pay bands. Any general increase in GS rates of basic pay approved by Congress and the President will be applied only to the FSIS band ranges (*i.e.*, band minimums and maximums). Demonstration project employees will receive pay increases based on their rating of record. Funds currently applied to within-grade increases, quality step increases, and the annual GS pay adjustment will be used to grant these performance-based pay increases. Employees rated below Fully Successful will not receive any basic pay increase, nor will they receive pay increases when locality pay percentages are increased. (See section III.C.)

In addition, employees in developmental positions may receive additional pay increases. Funds used for career-ladder promotions from one grade to a higher grade will initially be used to fund these developmental pay increases. These pay increases may be granted to an employee to recognize the faster progression that can occur in a developmental position. This pay flexibility addresses the objective of improving retention by raising the pay of high-performing employees while also supporting the objective of preserving merit system principles (*e.g.*, equal pay for work of equal value). (See section III.D.)

4. Performance Appraisal

The demonstration project will continue to use the current FSIS appraisal program including the current five-level rating process, which incorporates competencies into the performance standards. (The five-level rating system has the following levels: 1—Unacceptable, 2—Marginal, 3—Fully Successful, 4—Superior, and 5—Outstanding.) The performance appraisal process is intended to (1) promote good performance; (2) encourage a continuing dialogue between supervisors and employees on organizational objectives, supervisory expectations, employee performance, employee needs for assistance and guidance, and employee development; and (3) provide a basis for performance-related decisions in employee development, pay, rewards, assignment, promotion, and retention. The program will more effectively communicate to employees how they are performing, the rewards of good performance, and the consequences of poor performance.

5. Pay for Performance

The most important feature of the demonstration project is that it links the employee's rating of record to shares of a performance pay pool. Performance-based pay increases give an operating unit the ability to raise the pay of good performers more rapidly, thus improving retention of good performers. Performance pay is distributed to employees either in the form of increases in base pay or, when the employee reaches a band maximum (or is on retained pay), in the form of a performance bonus. The number and type of performance pay pools will be described in implementing guidance, but performance ratings will be linked to performance pay shares so that employees who earn a level five rating (the highest) will earn the greatest number of performance pay shares, employees who earn a level four rating will earn a smaller number of shares, and employees who earn a level three rating will earn the fewest number of performance shares. Employees rated below level three will not be eligible for performance pay increases.

6. Performance Awards

Existing programs for both non-monetary and monetary recognition will remain under the plan in accordance with chapter 45 of title 5, United States Code.

Awards address two objectives. First, rewarding achievement will make high achievers more likely to remain, thus improving retention of the best

performers. Second, the potential for awards for achievement will encourage improved individual performance. Although FSIS is not testing any new procedures under the demonstration project authority in chapter 47 of title 5, awards are a key part of a performance pay system and therefore noted here to clarify their use and provide a full picture of the project plan.

7. Line Management Authority

The program areas will delegate greater authority and accountability to line managers. This delegation is intended to improve the effectiveness of human resources management by strengthening the role of line managers as the human resources managers of their units. The project will be managed by the FSIS Demonstration Project Management Board (DPMB), composed of representatives from each operating unit (program area) and chaired by the Assistant Administrator for the Office of Management.

D. Participating Organizations

The Department proposed that FSIS be the only agency participating in this project. The Department and FSIS have determined that employees in all program areas in the agency, including headquarters and field employees, will participate, except that all bargaining-unit members will be excluded. Including all bargaining unit members would cause the project to exceed the 5,000 limit on the number of participating employees. Included in the project are all non-bargaining unit employees located in meat and poultry plants throughout the United States (excluding intermittent food inspection personnel (GS–1863) and intermittent veterinarian personnel (GS–701) appointed under Schedule A 213.3113(1)(3) and Schedule C employees), 15 District Offices, 3 Field Laboratories, a Policy Development Division in Omaha, NE, a Financial Processing Center in Des Moines, IA, a Human Resources Field Office in Minneapolis, MN, as well as all Headquarters program offices. Each of these units is committed to operating a credible, robust performance appraisal program aligned to the organization's strategic goals and objectives. These organizations have demonstrated this commitment during the past two years, as FSIS implemented a comprehensive performance management training program within the agency.

E. Participating Employees

The demonstration project covers all General Schedule employees (with pay plan codes GS and GM) in non-bargaining unit positions. The excluded bargaining unit positions are nonsupervisory positions in the food technology (GS–1382), food inspection (GS–1863), and consumer safety inspection (GS–1862) series and non-bargaining food inspection (GS–1863) and veterinary (GS–701) employees appointed under Schedule A 213.3113(1)(3).

Also *excluded* from coverage of this project are *all* Senior Executive Service (SES), Senior Level (SL), and Federal Wage System (WG) employees, and all Schedule C employees.

Table 1 shows the number of employees subject to coverage under this project by occupational series and grade. The OPM occupational series will be retained for all covered positions.

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TABLE 1.—COVERED EMPLOYEES, BY SERIES AND GRADE (AS OF 09/30/08)

Series	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
0018												4	1			5
0080														1		1
0099				2												2
0101															1	1
0110														4		4
0199				1												1
0201									5		8	21	48	20	4	106
0203					10	5	13									28
0260									1		2	1	8	4		16
0299							1									1
0301							3		42	1	3	23	21	17	12	122
0303	4		6	24	10	6	17		2							69
0305				2	4											6
0318					4	11	34	7	6							62
0326		1	1	12	7											21
0335				1		5	2									8
0340														38	31	69
0341											1		1			2
0342									1				1	1		3
0343							2		19		14	37	52	33	18	175
0344					2	3	34	1								40
0361										1						1
0391													2			2
0401													4	2	2	8
0403									7		6	29	33	18	2	95
0404			5	4		1	7		10	1	2					30
0414												1				1
0415													1	1		2
0499		1		1	1											3
0501									6		6	3	6	8	3	32
0503					17	11	3	4								35
0510							1		1			7	10	6		25
0544							4									4
0560							1		1		1	4	3	3	1	14
0561							1									1
0601													4	8	2	14
0690													2			2
0696									5		23	151	85	2		266
0698					1											1
0699				3												3

TABLE 1.—COVERED EMPLOYEES, BY SERIES AND GRADE (AS OF 09/30/08)

Series	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
0701											54	657	183	27	6	927
0799							25				1					26
0896													1	1		2
1035									2		2	3	9	1	1	18
1071												2				2
1084									1			1				2
1101													3	1	1	5
1102							1		2			2	4	3		12
1301													2			2
1311				1		1			4		2					8
1320							1		3		2	32	21	5		64
1382													7	2	1	10
1412												4	1	1		6
1501													3	6	1	10
1515												1	1			2
1529													1	1		2
1530														1		1
1603					1											1
1654											1		1			2
1701														1		1
1702						1		1	1							3
1801									1		29	87	34	20	3	174
1810												6	2	1		9
1862							5	27	136							168
1899					1											1
2001											3	1	2			6
2005						1										1
2210					1				1		1	32	29	19	5	88
2299									1							1
Total	**4**	**2**	**12**	**51**	**59**	**45**	**155**	**40**	**258**	**3**	**161**	**1,109**	**586**	**256**	**94**	**2,835**

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F. Labor Participation

No bargarining unit employees are covered in this project.

G. Project Design

The project methodology is to introduce into all FSIS program areas (for covered positions) certain innovations in human resources management, and to evaluate over time the effects of those innovations on the ability of the program areas to manage their human resources. The methodology includes the following steps:

1. Selection of Innovations: The Department and FSIS have determined that particular pay banding and performance-based pay progression innovations that are linked to a framework of core competencies should be included in the project. These innovations, and the procedures associated with them, are described below under *Pay Banding Classification and Pay System, Performance Appraisal System, Performance-based Payouts and Awards, Developmental Pay Increases, Staffing, and Reduction-in-Force* (See Section III, A through F).

2. Selection of Program Areas: The Department and FSIS have selected all program areas of the agency for inclusion in the project since the total number of non-bargaining unit employees is approximately 2,900 (part-time, and full-time) and falls within the

maximum of 5,000 allowed for a demonstration project.

3. Goals and Objectives: The specific project objectives are listed under the *Supplementary Information* and *Executive Summary* and are directly related to the issues identified under Section II. B, *Problems with the Present System.*

4. Partnership: The Department and FSIS have limited the covered workforce to non-bargaining unit positions. Therefore, input from labor representatives is not required. However, consistent with the policy of the agency Administrator, FSIS will seek input from two employee associations whose membership overlaps with the covered workforce.

5. Baseline Evaluation: To provide a basis of comparison between employee opinions of the current system and their future opinions of the project system, each employee in the covered program areas will be asked to complete an opinion questionnaire comparable to the Federal Human Capital Survey prior to implementation of the project. To establish a baseline for cost analysis, each operating unit will be required to analyze its personnel costs during fiscal years 2005, 2006, and 2007.

6. Training: The agency and the program areas will provide training to managers, employees, and human resources staff prior to implementation of the project and will provide additional training to managers on the pay-for-performance system prior to the end of the first performance cycle. (See Section IV, *Training.*)

7. Implementation: To ensure a smooth implementation, the agency will emphasize top management support; the development of detailed operating procedures and implementing directives prior to implementation; thorough training of managers, employees, and human resources staff; step-by-step implementation planning; adequate backup systems, particularly in automated personnel and payroll systems; and sufficient operating resources.

8. Program Evaluation: The Department and FSIS will arrange for periodic evaluation of the project under an OPM-approved evaluation plan. (See Section VIII, *Project Evaluation.*) The evaluation will be designed to determine whether the innovations are achieving project goals and objectives and are operating within acceptable cost limits. (See Section IX, *Costs.*)

III. Personnel System Changes

A. Pay Banding Classification and Pay System

1. Establishment of Career Paths and Pay Bands

In coordination with OPM, FSIS may establish, and adjust over time, career paths that group one or more occupational categories together and provide a common pay banding structure (*i.e.,* a set of work levels and rate ranges) for occupations within a given career path. Initially, FSIS intends to establish four career paths as follows:

(a) Administrative, Professional, and Scientific, [AP]: Policy, staff, line, supervisory, and managerial positions in science, veterinary medicine, consumer safety, food technology, mathematics, accounting, and other comparable occupations with a positive education requirement. Examples of occupational series are 0403—Microbiology, 0510—Accounting, 0696—Consumer Safety, 0701—Veterinary Medical Science, and 1301—General Physical Science. In addition, this career path will include policy, staff, line, supervisory, and managerial positions in such fields as finance, procurement, human resources management, public information, management and program analysis, compliance investigation, and other two-grade interval occupations that do not maintain a positive education requirement. Examples of these occupational series are 0201—Human Resources Management, 0343—Management and Program Analysis, 1035—Public Affairs, and 1801—Compliance Officer.

(b) Supervisory Inspection [AI]: Supervisory positions that direct the work of inspectors at an import warehouse, a plant, or in a circuit of plants within a geographic area. These positions are 1862—Supervisory Consumer Safety Inspectors.

(c) Scientific and Technical Support [AS]: Line positions, predominantly in agency laboratories, which support professional and scientific operations. Examples include 0404—Biological Science Technician, 1311—Physical Science Technician, and similar traditional one-grade interval technician support occupations in agency laboratories.

(d) Management Support [AO]: Nonsupervisory and supervisory clerical and assistant positions that support positions not fitting the definition of any other career paths. Examples include 203—Human Resources Assistant, 318—Secretary, 326—Office Automation Assistant, 344—Management Assistant, and similar traditional one-grade interval technician and administrative support occupations.

Each career path will be subdivided into pay bands. Each pay band will correspond to one or more GS grades. Pay bands provide larger classification targets that can be defined by shorter, simpler, and more understandable classification standards. In coordination with OPM, FSIS may establish, and adjust over time, a career path's pay band structure. Initially, the pay bands within each career path and their relationship to GS grades will be as follows:

TABLE 2—SAMPLE PAY BANDS UNDER PHHRS

Career path	Pay Band 1	Pay Band 2	Pay Band 3	Pay Band 4	Pay Band 5	Pay Band 6
Administrative, Professional, and Scientific (AP).	GS–1/4 (Student Trainee).	GS–5/7 Trainee	GS–9/11 Intermediate.	GS–12/13* Full Performance.	GS–14 Expert ..	GS–15 Senior Expert.
					Pay Band 5S	Pay Band 6S
					GS–13/14 Supervisor.	GS–15 Manager.
Supervisory Inspection (AI)	.....	.....	GS–8/9 Supervisory Inspectors.	GS–10/11 Senior Supervisors.		
Scientific & Technical (AS)	GS–1/4 (Aide) ..	GS–5/6/7 Entry	GS–8/9 Independent.	GS–10/11 Expert & Supervisory.		

TABLE 2—SAMPLE PAY BANDS UNDER PHHRS—Continued

Career path	Pay Band 1	Pay Band 2	Pay Band 3	Pay Band 4	Pay Band 5	Pay Band 6
Management Support (AO)	GS–1/4 Clerical (Entry).	GS–5/6/7 Assistant or Clerical Supervisor.	GS–8/9/10 Senior or Lead Assistant, and Supervisor.			

* Also includes supervisory positions where the band-controlling work is actually personally performed non-supervisory work.

The final pay banding architecture will be described in implementing guidance. FSIS will coordinate changes in career paths or pay banding structures with OPM. After coordination with OPM, FSIS will give affected employees advance notice and an opportunity to comment before effecting a change with respect to career paths or pay banding structure.

2. Position Classification

Occupational groups will be placed in career paths, pay bands will replace grades, and FSIS pay band standards will replace OPM position classification standards. The General Schedule occupational series will be retained.

Each classification standard will describe the threshold of work encompassed by each pay band based on general duties and responsibilities, knowledge, skills, and abilities. FSIS will establish classification standards in consultation with OPM. Positions must meet or exceed the threshold to be classified into a pay band. These bases complement each other at each pay band in a career path and may not be separated in classifying a position. OPM classification standards will not be used directly, but may be used indirectly to establish competency criteria that distinguish pay bands or pay levels within a key career path.

3. Delegation of Classification Authority

The agency has delegated classification authority to SES and GS–15 executives and managers since July 2004. The delegated classification authority (DCA) provisions of this project continue this initiative and increase the number of managers who receive classification authority. Managers must successfully complete DCA training before classification authority may be exercised. The delegation of classification authority will be facilitated by the expansion of an intranet-based Position Description Library, which will include standard descriptions of all key positions in all career paths and pay bands. Line managers will utilize this intranet-based Position Description Library to select or classify most positions. These changes are intended to simplify and speed up the classification process, make the process more serviceable and understandable, improve the effectiveness of classification decision-making and accountability, and facilitate pay for performance. Implementing guidance will describe the modified DCA policies and procedures.

4. Classification Appeals

An employee covered by the FSIS Demonstration Project may appeal the occupational series, official title, or pay band of his or her position at any time to the agency, Department, or directly to OPM consistent with procedures currently prescribed under 5 CFR part 511, subpart F. Implementing guidance will describe the classification appeals process.

5. Elimination of Fixed Steps

Employees will be converted from the existing 15-grade GS position classification and pay system established under 5 U.S.C. chapter 51 and chapter 53, subchapter III, to the new pay banding system. The 10 fixed steps of each GS grade will not apply to employees participating in the demonstration project. The fixed-step system operates primarily to reward longevity. A pay banding pay system is an important element of any effort to make pay more performance-sensitive. No employee's pay will be reduced solely as a result of becoming covered by the demonstration project. (See section V.A.) However, demonstration project employees will no longer receive longevity-based, within-grade pay increases at prescribed intervals. Instead, they will be granted annual performance increases and bonuses as described in section III.C below.

6. Rate Range

The normal minimum and maximum rates of the rate range for each pay band will equal the applicable step 1 rate and step 10 rate, respectively, for the lowest and highest GS grades that are included in the pay band. The normal minimum and maximum rates of each band will be increased at the time of a general pay increase under 5 U.S.C. 5303 so they equal the new minimum and maximum rates of the grades corresponding to the band.

The minimum rate of the pay band is extended 5 percent below the normal minimum for employees with a rating of record below Fully Successful. Such an employee's rate of basic pay may fall below the normal pay band minimum when the minimum rate increases as a result of a pay band adjustment, but the employee cannot receive a pay increase because the employee's rating of record is below Fully Successful, as described in section III.C. 4.

The maximum rate of each pay band is extended 5 percent above the normal maximum for all employees with a rating of record at the highest level (currently called ''Outstanding'' in FSIS). This feature will help to ensure that the range of available pay rates will be adequate to recognize truly outstanding performance. The upper range extension is reserved for employees with an Outstanding rating. If an employee in the upper range extension is rated below the Outstanding level, special provisions apply, as described in section III.A.11.

7. Locality Pay

Locality-based comparability payments under 5 U.S.C. 5304 will be paid on top of the rate of basic pay in the same manner as those payments apply to GS employees (except as otherwise provided in this plan). Staffing supplements may apply as described in section III.A.12. When a locality-based comparability payment established under 5 U.S.C. 5304 is increased, a demonstration project employee whose most recent rating of record is Fully Successful or higher is entitled to the increased locality payment.

A demonstration project employee whose most recent rating of record is below Fully Successful is entitled to the increased locality payment, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. This reduction is necessary to ensure, in an administratively feasible way, that an employee rated less than Fully Successful will not receive a pay increase. It does not constitute a

reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States Code. (Exception: An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than 5 percent below the normal range minimum.)

A locality rate cap 5 percent higher than the normal EX–IV cap is established to accommodate those Outstanding performers in the 5 percent upper rate range extension. This higher cap will apply only to employees receiving a rate within the upper range extension. If the locality rate for an employee at the normal band maximum is affected by the EX–IV cap, resulting in an ''effective locality pay percentage'' that is less than the regular locality pay percentage, the locality rate for an employee in the upper rate range extension of the same band will be computed using that same effective locality pay percentage. (For example, if the regular locality pay percentage is 30 percent, but the EX–IV cap causes the amount of locality pay actually received by an employee at the normal band maximum to be 20 percent, that effective locality pay percentage of 20 percent would be used to compute locality pay for an employee in the upper range extension of the same band.)

8. Rate of Basic Pay Upon Initial Appointment

Upon appointment to a demonstration project position under Delegated Examining, Direct-Hire Authorization, or other authority primarily designed for initial entry into the Federal service (*e.g.*, Veterans Employment Opportunity Act, 30% Disabled Veteran Appointment), an appointee's rate of basic pay may be set at any rate within the normal pay band range. In exercising this flexibility, FSIS will consider the appointee's qualifications, competing job offers, FSIS's need for the appointee's talents, the availability of other candidates, the appointee's potential contributions to FSIS mission accomplishment, and the rates received by on-board employees. This flexibility will allow FSIS to compete more effectively with private industry for the best talent available. Implementing guidance will provide managers with assistance in setting pay to assure fair and equitable treatment of a diverse workforce.

9. Rate of Basic Pay Upon Promotion

Upon promotion to a higher pay band within a career path or to a pay band in another career path with a higher maximum rate, an employee's rate of basic pay will be set at a rate within the higher pay band that provides a pay increase of 8 percent, unless a greater increase is necessary to set pay at the normal range minimum. (See section III.E.3 for definition of ''promotion.'') In consultation with OPM, FSIS may establish exceptions to this policy to deal with employees receiving a retained rate, employees who are re-promoted shortly after demotion, employees with exceptional performance warranting a larger increase with higher-management approval, etc. In exercising this flexibility, FSIS will consider the appointee's qualifications, competing job offers, FSIS's need for the appointee's talents, and the appointee's potential contributions to FSIS mission accomplishment. FSIS may adopt, in consultation with OPM, policies providing a promotion-equivalent increase in appropriate circumstances to a Federal employee outside the demonstration project who is selected for a position covered by the demonstration project.

FSIS employees, who at the time of conversion into the demonstration project are in a career ladder to a higher GS grade (*i.e.*, have not reached the top level of that career ladder), will be eligible for special in-band pay increases under the authority of this demonstration project. The in-band pay increases will be sufficient to ensure that an employee's base rate under the demonstration project is equivalent to the base rate which the employee would have received had the employee and the position remained in the General Schedule. Only one in-band increase may be received in a 52-week period under this ''grandfathering'' authority. In other words, once a year, FSIS will compare the normal base rate established for the employee under the demonstration project with the base rate the employee would have been paid under the General Schedule pay system. The projected General Schedule base rate serves as a floor rate that becomes payable when it exceeds the normal base rate under the demonstration project (resulting in a special pay increase to reach the floor rate). The floor rate will not be used in applying future pay adjustments under the demonstration project while the grandfathering benefit is in effect; instead, FSIS will continue to calculate the employee's normal base rate under the demonstration project as a separately maintained pay entitlement that will become payable if it exceeds the floor rate.. This ''grandfathering'' benefit will cease to be applicable when the employee reaches equivalence with the top GS grade of the formerly applicable career ladder. At that point, if the base rate established under this ''grandfathering'' authority is higher than the normal base rate established under the demonstration project, the rate under the ''grandfathering'' authority will be converted into the employee's official base rate under the demonstration project. Only current FSIS employees who convert at the inception of pay banding will be afforded this ''grandfathering'' benefit. More specific terms and conditions of this benefit will be established by FSIS in the *FSIS Demonstration Project Policies and Procedures Handbook* that will implement the project plan.

FSIS may establish special rules for computing the promotion increase for promotions involving positions covered by a staffing supplement that take into account the staffing supplement and locality pay, subject to guidance provided by OPM.

10. Rate of Basic Pay in Noncompetitive Lateral Actions

Upon non-competitive lateral movement (*e.g.*, via transfer or reassignment, not conversion of position) to a demonstration project position from another Federal position, an employee's pay rate (including any locality payment or staffing supplement) will be set at an amount that is equal (after any geographic pay conversion) to the employee's existing pay rate (including any locality payment or equivalent basic pay supplement), subject to the applicable normal range maximum. For such an employee moving from a position outside the demonstration project, FSIS may provide an increase in the rate of basic pay immediately after movement to reflect the prorated value of the employee's next scheduled within-grade increase or similar within range adjustment under the former pay system, consistent with the requirements in section V.A.

11. Other Pay Administration Provisions

Annual performance-based pay increases described in section III.C.3 will be made to the rate of basic pay. These increases are scheduled to be made on the same date that the annual rate range adjustments normally take effect—*i.e.*, the first day of the first pay period beginning on or after January 1. To be eligible for an annual performance pay increase an employee must have a rating of record of Fully Successful or higher.

Annual performance awards described in section III.C.5. provide for lump-sum cash payments to recognize performance and will be made at the same time as the annual performance pay increase. To be eligible for a performance award, an employee must have a rating of record of Fully Successful or higher.

Developmental pay increases described in Section III.D may be paid no more than once during any 52-week period, following the mid-year progress review.

The grade retention provisions in 5 U.S.C. 5362 and 5 CFR part 536 are not applicable (*i.e.*, no pay band retention). The pay retention rules in 5 U.S.C. 5363 and 5 CFR part 536 apply to demonstration project employees, subject to the following exceptions:

(1) An employee with a rating of record below Fully Successful may not receive an increase in his or her retained rate under the 50-percent adjustment rule in 5 U.S.C. 5363(b)(2)(B);

(2) The cap on retained rates is equal to the rate for level IV of the Executive Schedule plus 5 percent (instead of the EX–IV cap established in 5 CFR 536.306) in order to accommodate employees in the upper range extension whose rating of record falls below Outstanding;

(3) An employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other pay action; and

(4) The range maximum rate used in computing retained rate adjustments under the 50-percent adjustment rule will be the maximum rate of the highest applicable rate range (including any applicable locality payment or staffing supplement) taking into consideration an employee's rating of record. For retained rate employees rated Outstanding, the increase is 50 percent of the dollar change in the applicable adjusted rate for the upper range extension maximum. (Note that an employee rated Outstanding must have a retained rate in excess of the upper range extension maximum adjusted rate, since he or she would otherwise be converted to a rate within that range extension.) For retained rate employees rated below Outstanding, the increase is 50 percent of the dollar change in the applicable adjusted rate for the normal band maximum.

If an employee is receiving a retained rate that is less than the applicable adjusted maximum rate (including any applicable locality payment or staffing supplement) for the upper range extension for the employee's band, and if that employee receives a rating of record of Outstanding, the employee's retained rate will be terminated and converted to an equal adjusted rate (base rate in upper range extension plus applicable locality payment or staffing supplement). This conversion must be processed before any other pay adjustment.

For a retained rate employee with a rating of record of Outstanding, if a retained rate increase provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the upper range extension maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the maximum rate of the upper range extension.

For a retained rate employee with a rating of record of Fully Successful or Superior, if a retained rate adjustment provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the normal band maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the normal band maximum rate.

For a retained rate employee with a rating of record below Fully Successful, the retained rate is frozen and not subject to adjustment. When such an employee's retained rate falls below the applicable adjusted rate for the normal band maximum, the employee's retained rate will be terminated, and the employee's pay will be set at an adjusted rate equal to the retained rate (*i.e.*, the rate is not set at the range maximum).

As required by 5 CFR 536.304(a)(2) and 536.305(a)(2), any general pay adjustment, including a retained rate adjustment as described in the preceding paragraphs, must be processed before any other simultaneous pay action (such as a geographic pay conversion).

When applicable, the saved pay rules in 5 U.S.C. 3594 and 5 CFR 359.705 for former SES members continue to apply to demonstration project employees, except that (1) an employee with a rating of record below Fully Successful may not receive an increase in his or her saved rate under 5 U.S.C. 3594(c)(2); and (2) the 50-percent adjustment rule must be applied in the same manner as it is applied for a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs. The rules regarding termination of a saved rate when it falls below the applicable adjusted maximum rate must be parallel to those governing termination of a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs.

FSIS may adopt supplemental pay administration policies governing matters not specifically addressed in this plan, subject to any OPM guidance. In addressing geographic conversions and simultaneous pay actions, such rules must be consistent with 5 CFR 531.205 and 5 CFR 531.206, respectively.

12. Staffing Supplements

An employee who is assigned to an occupational series and geographic area covered by an OPM-established special rates schedule, and who meets any other applicable coverage requirements, will be entitled to a staffing supplement if the maximum adjusted rate for a covered position in the GS grades corresponding to the employee's band is a special rate that exceeds the applicable maximum GS locality rate. The staffing supplement is added on top of the rate of basic pay in the same manner as locality pay. An employee will receive the higher of the applicable locality payment or staffing supplement.

For employees being converted into the demonstration project, the employee's total pay immediately after conversion will be the same as immediately before, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in the total salary rate. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS base rate corresponding to that special rate (step 10 GS base rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for banded grades)/(GS base rate corresponding to that special rate)

Demonstration base rate = (Former GS adjusted rate [special or locality rate])/(Staffing factor)

Staffing supplement = demonstration base

rate × (staffing factor − 1)
Salary upon conversion = demonstration base rate + staffing supplement [sum will equal existing rate]

If a special rate employee is converted to a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration project, the demonstration base rate is derived by dividing the employee's former special rate by the applicable locality pay factor (for example, in the Washington-Baltimore area, the locality pay factor is 1.2089 in 2008). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any GS or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied, as appropriate. Upon geographic movement, an employee who receives the special staffing supplement will have his or her entitlement to a staffing supplement redetermined; any resulting reduction in the supplement will not be considered an adverse action or a basis for pay retention.

When a staffing supplement is increased, a demonstration project employee whose rating of record is below Fully Successful is entitled to the increased supplement, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. Such a reduction does not constitute a reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States Code. (Exception: An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than 5 percent below the normal range minimum.)

Established salary including the staffing supplement will be considered basic pay for the same purposes as a special rate under 5 CFR 530.308—*e.g.*, for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave.

Adjusted rates that include a staffing supplement are subject to an Executive Schedule Level IV (EX–IV) cap, except that an adjusted rate cap 5 percent higher than the EX–IV rate is established exclusively for Outstanding-rated employees in the upper range extension. If the adjusted rate for an employee at the normal band maximum is affected by the EX–IV cap, resulting in an ''effective staffing supplement percentage'' that is less than the regular staffing supplement percentage, the adjusted rate for an employee in the upper rate range extension of the same band and in the same staffing supplement category will be computed using that same effective staffing supplement percentage. (For example, if the regular staffing supplement percentage is 35 percent, but the EX–IV cap causes the amount of the staffing supplement actually received by an employee at the normal band maximum to be 20 percent, that effective staffing supplement percentage of 20 percent would be used to compute the staffing supplement for an employee in the upper range extension of the same band.)

OPM may approve staffing supplements for categories of employees within the demonstration project who are not in approved special rate categories for GS employees, consistent with the provisions in 5 U.S.C. 5305(a) and (b).

13. Status as GS Employees

Notwithstanding the waiver of laws governing the GS classification and pay system, demonstration project employees will be considered to be GS employees in applying other laws, regulations, and policies, except as otherwise provided in this plan. For example, demonstration project employees will remain eligible for locality pay under 5 U.S.C. 5304 (subject to exceptions described in this plan), hazardous duty differentials under 5 U.S.C. 5545(d), and recruitment, relocation, and retention incentives under 5 U.S.C. 5753–5754. Demonstration project employees will be covered by the regulations in 5 CFR part 300, subpart F, except that ''grade'' will be replaced with ''pay band.'' However, project employees will not be covered by the supervisory differential provision in 5 U.S.C. 5755.

A demonstration project employee who converts from the project position to a GS position without a break in service will be considered a GS employee for the purpose of applying the GS promotion rule under 5 U.S.C. 5334(b). (See section V.B.)

B. Performance Appraisal System

FSIS will use its current performance management program under the Department of Agriculture appraisal system that has been approved by OPM, consistent with chapter 43 of title 5, United States Code. Throughout the duration of the demonstration project, the effectiveness of performance management within the project will be monitored by examining metrics and assessments that will be included in the demonstration project evaluation plan.

1. Program Requirements

The FSIS performance appraisal program requires written performance plans for each covered employee containing the employee's performance elements and standards. The performance plan links the performance elements and standards for individual employees to the organization's strategic goals and objectives. Ongoing feedback and dialogue between employees and their supervisors regarding performance is required. In addition, the program provides for, at a minimum, one mid-year progress review.

The FSIS appraisal program, including its performance levels and standards, provides for making meaningful distinctions in performance. The program currently uses a five-level summary rating pattern to summarize performance and three levels to appraise performance at the element level. Its summary level pattern under 5 CFR 430.208(d) uses Pattern H with Levels 1, 2, 3, 4, and 5, which FSIS has labeled Unacceptable, Marginal, Fully Successful, Superior, and Outstanding, respectively. Employees must be covered by their performance plan for at least 90 days before they can be assigned a rating of record. Supervisors and managers apply the appraisal program in a way that makes appropriate differentiations in performance. These differentiations reflect overall organizational performance. Employees receive a written performance appraisal (*i.e.*, a rating of record) annually. Forced distributions of ratings are prohibited. Each annual appraisal period will begin on October 1 and end on the following September 30. Performance appraisals will be completed in a timely manner to support pay decisions in accordance with section III.C.

Additional guidance on the performance appraisal program is provided in current FSIS directives. Performance appraisal is an evolutionary process, and changes may be made during the course of the demonstration project based on findings from our ongoing evaluations and reviews. Any changes will be communicated to affected employees, and they will be given a chance to

comment before FSIS implements the changes.

2. Supervisory Accountability

Supervisors are responsible for providing appropriate consequences for employee performance by addressing poor performance and recognizing exceptional performance. The performance plans for supervisors and managers include the degree to which supervisors and managers plan, assess, monitor, develop, correct, rate, and reward subordinate employees' performance. It is recognized that specific training must be provided to prepare supervisors and managers to exercise these responsibilities. FSIS understands that this demonstration project will heighten the need for continuing supervisory training to support the accurate and realistic appraisal of performance.

3. Reconsideration of Ratings

To support fairness and transparency for the program and its consequences, employees have an opportunity to request reconsideration of a rating of record by a management official other than the rating official. Such reconsiderations must be initiated no more than 15 days after the official rating of record is assigned, consistent with the applicable administrative grievance policy. If the reconsideration of the appraisal results in a different rating of record, the revised rating of record will become the basis for the employee's pay increase(s) in accordance with section III.C. If the adjustment occurs after all pay deliberations have been finalized, it does not result in a recalculation of other employees' pay increases.

If, after an opportunity to improve, an employee's performance is still not satisfactory, the Rating Official will give the employee a rating of Level 1, Unacceptable, and must take action to reassign or remove the employee, or place the employee in a lower pay band, in accordance with performance action provisions in law and regulation.

C. Performance-Based Payouts and Awards

1. Performance Shares

FSIS will establish rating/share patterns for each pay pool—that is, the relationship between ratings of record and numbers of shares. A share mechanism will be used (1) to ensure that employees with higher ratings of record receive greater performance payouts than employees with relatively lower ratings, and (2) to control costs without resorting to a forced distribution of ratings, which is prohibited.

FSIS may adjust rating/share patterns over time after coordination with OPM, and after giving affected employees advance notice. A change in the rating/share pattern may be applied in computing performance increases based on an appraisal period only if it takes effect at least 120 days before the end of that appraisal period.

Each employee will be assigned a certain number of shares, based on his or her rating or record. Initially, the number of shares for each rating level will be as follows: 9 shares are assigned to the Outstanding rating; 6 shares to the Superior rating; and 4 shares to the Fully Successful rating. No shares may be assigned to any rating of record below Fully Successful, since no pay increase is payable to employees with such a rating of record.

After the ratings of record and shares are assigned to employees the value of a single share can be calculated. The value of each performance share will be expressed as a percentage of the rate of basic pay. The agency will provide training to all project participants to assure fair, accurate performance ratings and equitable performance payouts.

2. Performance Pay Pools

Funds that otherwise would be spent on the annual GS pay adjustment, within-grade increases (WGI), and quality step increases (QSI) for demonstration project employees will instead be placed into a pay pool, which will be used to fund annual performance increases. Unlike GS employees, participating employees whose most recent rating of record is below Fully Successful will not receive any increase in their rate of basic pay.

Participating programs will establish pay pools for allocating performance-based pay increases. FSIS will determine which participating employees are covered by any pay pool and determine the dollar value of each pay pool. In setting the value of the pay pool, FSIS will initially allocate an amount for performance-based pay increases equal to the estimated value of the WGIs, QSIs, and the annual GS pay adjustments that otherwise would have been paid to participating employees. In computing the estimated value of WGIs and QSIs, FSIS may use estimated Governmentwide averages as computed by OPM or agency historical averages.

3. Performance-Based Payout

FSIS will determine the value of one performance share, expressed as a percentage of the employee's rate of basic pay, based on the value of the pay pool and the distribution of shares among pay pool employees. An individual employee's performance payout is determined by multiplying the determined percentage value of a performance share by the number of shares assigned to the employee. On the first day of the first pay period beginning on or after January 1 of each year, this amount will be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the employee's rate to exceed the applicable maximum of the employee's rate range. Notwithstanding the preceding sentence, employees in the upper range extension rated below the highest rating level are subject to special rules as described in sections III.A.6 and III.A.11. Any portion of an employee's performance payout amount that cannot be delivered as a basic pay increase will be paid out as a lump-sum performance bonus (with no charge to the pay pool). This lump-sum payment is not basic pay for any purpose and is not a cash award under chapter 45 of title 5, United States Code.

An employee with a rating of record of Fully Successful or higher may not receive a performance payout that is less than the percentage value of any simultaneous rate range adjustment, except for (1) an employee receiving a retained rate and (2) an employee in the upper range extension with a rating of record below Outstanding (Level 5) who is converted to a retained rate (as provided in section III.A.11.). This guaranteed amount will be used in place of any lower performance payout resulting from the share methodology. Any additional costs of using the guaranteed amount will be funded outside the pay pool. Otherwise, the guaranteed amount is applied in the same manner as the regular performance payout.

An employee who does not have a rating of record for the appraisal period most recently completed will be treated the same as employees in the same pay pool who received the modal rating for that period, subject to FSIS proration policies.

FSIS may establish policies on prorating the performance-based pay increases and/or lump-sum payments for an employee who, during the period between annual pay adjustments, was (1) hired or promoted, (2) in leave-without-pay status, (3) on a part-time work schedule, or (4) in other circumstances that make proration appropriate. Such proration policies will provide each eligible employee with the full percentage adjustment used to adjust base rate ranges (if any) and will prorate any additional amount

of the performance pay increase that would be applicable to the employee but for the proration requirement.

If any employee's rating of record that is the basis for a performance payout is retroactively revised (after the regular effective date of performance payouts) through a reconsideration or grievance process, the employee's performance payout must be retroactively recomputed using the share value as originally determined. Any such retroactive corrections are not funded out of the pay pool and do not affect the performance payouts provided to other employees in the pay pool. In setting the size of a future pay pool, management will take into account past and projected corrections.

Special provision for employees receiving a retained rate: An employee receiving a retained rate under 5 U.S.C. 5363 or 5 U.S.C. 3594 is not eligible for a basic pay increase except in conjunction with (1) a rate range adjustment as described in section III.A.11 or (2) a geographic conversion under 5 CFR.359.705(e) or 536.303(b), as applicable. At the discretion of an authorized agency official, a retained rate employee may receive the same lump-sum payment payable to an employee in the same pay pool who is at the applicable range maximum and who has the same rating of record and number of shares.

Special provisions for employees returning to duty after a period of service in the uniformed services or in receipt of workers' compensation benefits: Special pay-setting provisions apply to employees who do not have a rating of record to support a pay adjustment but who are returning to duty status after a period of leave-without-pay or separation during which the employee (1) was serving in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) with legal restoration rights (*e.g.*, 38 U.S.C. 4316), or (2) was receiving workers' compensation benefits under 5 U.S.C. chapter 81, subchapter I. In these cases, FSIS will determine the employee's prospective rate of basic pay upon return to duty by making performance-based pay increases for the intervening period based on the modal rating of record for employees in the same pay pool. The performance pay increases during the intervening period may not be prorated based on periods covered by this provision. In addition, a performance pay increase that is effective after the employee's return to duty may not be prorated based on periods covered by this provision. A lump-sum payment for a period including actual service performed after the employee's return to duty must be prorated (based on service covered by this provision) under the same agency proration policies that apply generally to periods of leave without pay.

4. Employees Who Cannot Receive a Performance Payout

Employees with a rating of record below Fully Successful are prohibited from receiving a performance payout. When an employee does not receive a performance pay increase because of performance below Fully Successful, his or her pay rate may fall below the normal minimum rate of the pay band, since that range minimum may be increasing. However, in no case may an employee's rate of basic pay be set more than 5 percent below the normal range minimum.

If FSIS later chooses to give such an employee a new rating of record of Fully Successful or higher before the end of the next appraisal period, as a result of the successful completion of a formal improvement plan, the employee is entitled to an increase effective on the first day of the first pay period beginning on or after the date the new rating of record is final. The increase must be the same *percentage* basic pay increase resulting from the general pay increase that the employee would have been guaranteed to receive if he or she had been rated Fully Successful at the time the performance payout was initially denied. This provision only applies to the annual general increase and is not retroactive. Under no circumstances is an employee eligible for a performance payout based on share distribution until the next January.

Each employee who does not receive an increase in basic pay because his or her performance is less than Fully Successful will be entitled to be notified promptly in writing of that fact. At the same time, the employee must be informed in writing of the right to request that the agency reconsider its determination, under the same procedures prescribed by OPM regarding the determination not to provide a within-grade increase under 5 U.S.C. 5335(c). The Merit Systems Protection Board will process any appeals under this section in the same manner that it processes appeals under 5 U.S.C. 5335(c).

See section III.A.7 and section III.A.12 regarding the recomputation of an employee's rate of basic pay to prevent a pay increase resulting from an increase in the applicable locality payment or staffing supplement.

5. Performance Awards

Performance awards may be granted to any employee with a rating of record at Level 3 (Fully Successful) or higher and are given at the end of the performance year in conjunction with decisions on performance pay increases. FSIS will adopt supplemental award administration policies not specifically covered under the plan to improve implementation of existing authorities prescribed under chapter 45, title 5, United States Code. These performance awards are separate from performance pay increases.

D. Developmental Pay Increases

Employees in developmental positions (*i.e.*, positions with promotion potential to a higher pay band) may receive additional pay increases (in addition to the annual performance pay increase) as they acquire the competencies, skills, and knowledge necessary to advance to the full performance level of their position. An employee in a developmental position may be awarded a pay increase within his or her pay band that ranges up to 7 percent of basic pay to recognize the faster progression that can occur in a developmental position. Employees must be performing at the Fully Successful level or higher to be eligible for a developmental pay increase. Developmental pay increases may be paid no more than once during a 52-week period and following the mid-year progress review in accordance with implementing guidance. Developmental pay increases must be approved by the program's Assistant Administrator or his or her designee to ensure equity and accountability. The funds previously used for career-ladder promotions for the GS grade levels will initially be used to fund the developmental pay increases in the first fiscal year of the program's implementation. In all future fiscal years, FSIS will allocate a fixed amount of funds within the annual appropriation based on the amount historically spent on career-ladder promotions, and these funds will go into a pool for distribution to each FSIS program area to cover developmental pay increases.

E. Staffing

1. Minimum Qualification Requirements

Application of the OPM Operating Manual, *Qualification Standards for General Schedule Positions*, is simplified by allowing a candidate to qualify for a specific pay band if the candidate meets (or exceeds) the requirements for the lowest grade included in that specific pay band. For

example, a candidate for a 403-Microbiologist position assigned to Pay Band 2 (GS–5 through GS–7) need only meet the qualification requirements for a GS–0403 Microbiologist position at the GS–5 level.

For FSIS demonstration project employees and employees of other Federal agencies who are in sufficiently similar pay banding systems, the common OPM requirement of 1 year of experience ''at the next lower grade in the normal line of progression for the occupation'' is changed to ''at the next lower pay band in the normal line of progression for the occupation.''

2. Flexible Pay Setting for New Hires

Reference paragraph III A.8 regarding the rate of basic pay upon initial appointment.

3. Promotions

A promotion is a change to (1) a higher pay band in the same career path or (2) a pay band in another career path with a higher maximum rate of basic pay. To be eligible for promotion, an employee must have a current performance rating of Fully Successful or higher and meet the qualifications requirements for promotion to the next higher band. There are no time-in-band requirements. (See section III.A.9. for pay setting upon promotion.) When employees are competitively selected for a position with promotion potential, and are subsequently moved to a higher pay band in their career path, the action is processed as a non-competitive pay band promotion until the full performance level of the position is reached.

F. Reduction in Force

If, during the life of the demonstration project, FSIS enters into a reduction in force (RIF), the RIF will be conducted in accordance with 5 U.S.C. 1302 and 3502 and 5 CFR part 351, except as follows:

(a) Each of the career paths in each FSIS local commuting area will constitute separate competitive areas (*i.e.*, separate from the other career paths, and separate from the competitive areas of other FSIS employees);

(b) FSIS will establish competitive levels consisting of all positions in a competitive area which are in the same pay band and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position may be reassigned to any of the other positions in the level without undue interruption. Each demonstration project competitive level will become a Retention List for purposes of competition when employees are released from their competitive levels, displaced by higher-standing employees, or placed during the exercise of assignment rights.

(c) Assignment rights will be modified by substituting ''one pay band'' for ''three grades'' and ''two pay bands'' for ''five grades.''

(d) FSIS will use retention standing when it chooses to offer vacant positions within the meaning of 5 CFR 351.704.

Prior to conducting a RIF, FSIS will issue and implement a policy in accordance with 5 CFR part 330, subpart B, except that the establishment and operation of a reemployment priority list (RPL) will be designed to assist current FSIS competitive service demonstration project employees who will be separated as a result of a RIF and, subsequently, former FSIS competitive service demonstration project employees who have been separated as a result of a RIF, or who have fully recovered from a compensable injury after more than 1 year, in their efforts to be reemployed at FSIS, by affording them reemployment priority over certain outside job applicants for FSIS competitive service demonstration project vacancies.

FSIS will develop and adopt supplemental RIF administration procedures to augment the RIF policies stipulated by this plan.

IV. Training

Training will be provided to all participating employees, supervisors, and managers before the project is launched and throughout the life of the project. It is important that employees perceive the performance management program as fair and transparent; therefore, supervisors and managers will be trained extensively in setting and communicating performance expectations; monitoring performance and providing timely feedback; developing employee performance and addressing poor performance; rating employees' performance based on expectations; and involving employees in the development and implementation of the performance appraisal program. Supervisors and managers will be held accountable for the effective management of the performance of employees they supervise through performance expectations set for, and appraisals made of, their own performance in this regard.

All employees will be trained in the performance appraisal process and the pay adjustment mechanism. Various types of training are being considered, including video conferencing, on-line tutorials, simulation, and train-the-trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

1. Only General Schedule (pay plan codes GS and GM) employees who are not in a bargaining unit will be converted to this project (excludes non-bargaining unit food inspection (GS–1863 and GS–701) employees appointed under Schedule A 213.3113(1)(3) and Schedule C employees). Employees whose positions become covered by the demonstration project will convert into the career path and pay band covering the occupational series and grade of their position of record. Employees will convert to the demonstration project with no change in their total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement or staffing supplement). Special conversion rules apply to special rate employees as described in section III.A.12, Staffing Supplements. Any simultaneous pay action that is scheduled to take effect under the GS pay system on the date of conversion must be processed before processing the conversion to the pay banding system. FSIS implementing policies will provide procedures for converting an employee on grade retention under 5 U.S.C. 5362, receiving a retained rate under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594, or on a temporary promotion to the demonstration project.

2. Immediately after conversion, eligible employees will receive an increase in basic pay reflecting the prorated value of the next scheduled WGI. The prorated value is determined by calculating the portion of the time in step employees have completed towards the waiting period for their next WGI. This WGI ''buy-in'' adjustment will not be paid to (1) employees who are at the step 10 rate for their grade immediately before conversion to the demonstration project, (2) employees who are receiving a retained rate of pay under 5 U.S.C. 5363 or saved rate under 5 U.S.C. 3594 immediately before conversion to the demonstration project, or (3) employees whose rating of record is below Fully Successful.

3. Adverse action provisions under 5 U.S.C. chapter 75, subchapter II, do not apply to reductions in pay upon conversion into the demonstration project as long as the employee's total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement, or staffing supplement) is not reduced upon conversion.

4. The first performance-based pay increase under the project's pay adjustment mechanism will be effective on the first day of the first pay period beginning on or after January 1, 2010.

5. For employees who enter the demonstration project by lateral reassignment or transfer (*i.e.*, not by conversion of position), FSIS may apply parallel pay conversion rules, including rules for providing a prorated adjustment reflecting time accrued toward a GS within-grade increase or similar within-range adjustment under another pay system. If conversion into the demonstration project is accompanied by a geographic move, the employee's pay entitlements under the former pay system in the new geographic area must be determined before performing the pay conversion.

B. Conversion to the General Schedule

FSIS implementing guidance will provide procedures for converting an employee's pay band and pay rate to a GS-equivalent grade and rate of pay if the employee moves out of the demonstration project to a GS position. The converted GS-equivalent grade and rate of pay will be determined before any geographic move, promotion, or other simultaneous action that occurs simultaneously with conversion back to the GS system. The new employing organization must use the converted GS-equivalent grade and rate of pay in applying various pay administration rules that govern how pay is set in the GS position (*e.g.*, rules for promotion and highest previous rate under 5 CFR part 531, subpart B, and pay retention under 5 CFR part 536). The converted GS rate will not be adjusted to match a step rate before applying those rules. The converted GS grade and rate of pay are deemed to have been in effect at the time the employee left the demonstration project pay banding system. The rules for determining the converted GS grade for pay administration purposes do not apply to the determination of an employee's GS-equivalent grade for other purposes, such as reduction-in-force or adverse action. FSIS will perform the computations for employees who remain within FSIS and USDA. FSIS may perform the computations, as a courtesy, for employees who move to other Federal agencies. At a minimum, FSIS will provide a copy of the conversion procedures to gaining Federal agencies for their use. If an employee moves out of the demonstration project to a non-GS system, the employee's pay will be set under the pay-setting rules governing that system.

VI. Project Modification

Demonstration projects require modification from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. FSIS may modify and adjust features and elements of this project plan over time. FSIS will coordinate such modifications with OPM and gain its approval prior to implementing any modification. Depending on the nature and extent of the modification, OPM may require that the modification be published as a notice in the **Federal Register**.

VII. Project Duration

The initial implementation period for the demonstration project will be 5 years. However, with OPM's concurrence, the project may be extended for additional testing or terminated before the expiration of the 5-year period.

VIII. Project Evaluation

A. Overview

Chapter 47 of title 5, United States Code, requires an evaluation of each demonstration project, and section 470.317(b) of title 5, Code of Federal Regulations, further specifies a results evaluation ''to measure the impact of the project results in relation to its objectives.'' A rigorous longitudinal evaluation of the project, including a baseline evaluation, implementation evaluation, progress evaluation, and summative evaluation will be conducted in accordance with an OPM-approved evaluation plan. Below is a summary of the evaluation.

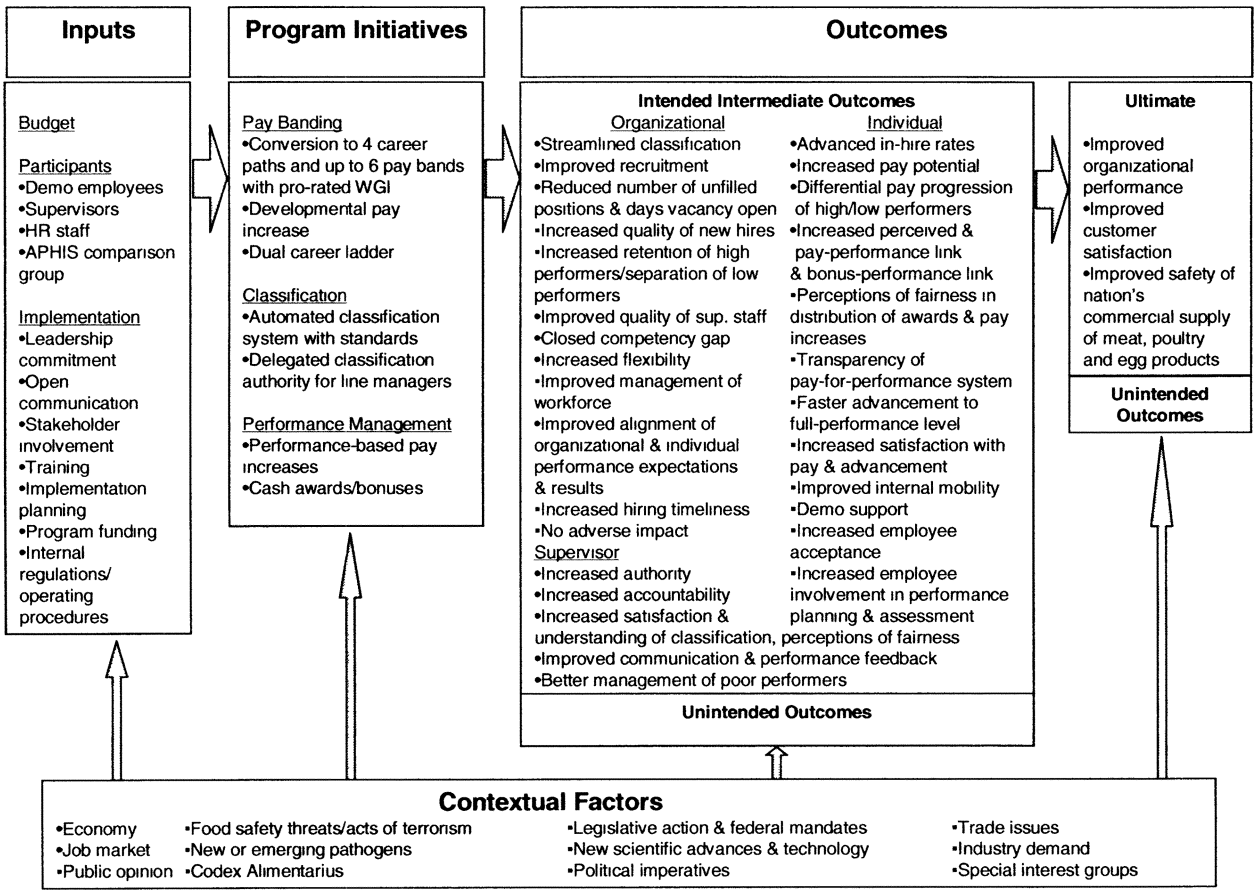
B. Evaluation Models

The evaluation plan is guided by four distinct models: A context model, an intervention impact model, an implementation impact model, and an overall logic model. Each model serves a unique and important purpose in the evaluation of the demonstration project. Also considered in the development of the evaluation plan is OPM guidance issued in its *Alternative Personnel Systems (APS) Objectives-Based Assessment Framework Handbook*. The APS Handbook includes an assessment framework which outlines the elements and dimensions for assessing Preparedness and Progress of alternative personnel systems, specifically those featuring performance-based pay. The Preparedness dimensions will be covered in the implementation evaluation and Progress elements as part of the longitudinal impact evaluation.

The logic model shown in Figure 1 integrates information from the context model, the intervention impact model, and implementation impact model with other key information, such as contextual factors cited in the FSIS 2008–2013 Strategic Plan. The logic model specifies the relationships among program elements (*e.g.*, participants, initiatives) and defines program success. The logic model provides a detailed representation of program inputs, program initiatives, intended intermediate outcomes, ultimate outcomes, unintended outcomes, and contextual factors of the demonstration project. For example, program inputs include the budget, participants of the project, as well as HR staff, supervisors, and the comparison group. Implementation factors such as leadership commitment, open communication and stakeholder involvement, as well as the degree of implementation (*i.e.*, the extent to which interventions were implemented as planned), will be considered as part of the implementation evaluation. These program inputs are expected to impact the program initiatives, including pay banding, classification and performance management, described in detail earlier.

The logic model is designed to evaluate two levels of organizational performance: intermediate and ultimate outcomes. The intermediate outcomes, the main focus of the evaluation, are defined as the results from specific personnel system changes. Intermediate outcomes may occur at the individual or organizational level. The ultimate outcomes are determined through improved organizational performance, improved customer satisfaction, and mission accomplishment. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the program initiatives will contribute to improved organizational effectiveness. The logic model also illustrates that the context within which the demonstration project operates during its 5-year period is an important consideration in interpreting the results obtained. The contextual factors, which may occur at any stage of the project, are potential intervening variables that may affect project outcomes positively or negatively. Intervening variables can facilitate or inhibit the intended outcomes, or they can result in unintended outcomes.

Figure 1. FSIS Demonstration Project Logic Model



In addition, the evaluation will take into account the requirements of section 1126 of Public Law 108–136 (5 U.S.C. 4701 note) which states that a pay-for-performance system may not be initiated under chapter 47 of title 5, United States Code, unless it incorporates the following eight elements: (1) Adherence to merit principles set forth in section 2301 of title 5; (2) a fair, credible, and transparent employee performance appraisal system; (3) a link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan; (4) a means for ensuring employee involvement in the design and implementation of the system; (5) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system; (6) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review; (7) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and (8) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system.

C. Evaluation

A quasi-experimental design will be used for the evaluation of this demonstration project. The Animal and Plant Health Inspection Services (APHIS) will serve as the ''no treatment'' GS comparison group, since it is not possible to randomly assign individuals to an ''experimental'' group and a ''control'' group in a demonstration project. APHIS is a similar organization, with a similar occupational mix and working conditions. This comparison group will be used primarily in the analysis of workforce data and employee perceptions gathered from employee surveys. Longitudinal data from APHIS and FSIS will be analyzed and compared to determine the overall effectiveness of the changes to the FSIS personnel system. Pre-post comparisons for FSIS, pre-post comparisons for APHIS, longitudinal comparisons for FSIS, longitudinal comparisons for APHIS, and cross-sectional comparisons between FSIS and APHIS will identify pre-existing baseline differences and help determine whether changes over time were due to the demonstration interventions.

D. Method of Data Collection

A multi-method approach to data collection and analysis will be used in the evaluation. Workforce information from OPM's Central Personnel Data File (CPDF) and personnel office records will be supplemented with perceptual survey data to assess the effectiveness and perception of the new system. Data from a variety of sources provide more than one perspective on the effectiveness of demonstration projects. In addition, both qualitative and quantitative data will be used in evaluating outcomes. The following data will be collected: (1) Workforce data; (2) personnel office data; (3) employee attitude surveys; (4) structured interviews and focus group data; (5) local site historian logs and implementation information; and (6) core results measures of organizational performance. In addition, data collected from prior demonstration projects will

provide benchmark data for additional comparisons. All data collection methods will consider the various career paths, pay bands, locations, operating units and other important distinguishing factors of the demonstration project. Each phase of the project will involve collecting the different types of data and preparing reports and interim briefings on the results. By using both qualitative and quantitative methods in conducting the evaluation, as well as benchmark data, confidence in the findings will increase and a more comprehensive understanding of the changes and impact will be gained.

The evaluation effort will consist of two main phases covering formative and summative evaluation over a 5-year period. The formative evaluation phase covers baseline data collection prior to implementation of the personnel system changes as well as the Implementation and Progress evaluations. The Summative Evaluation will focus on an overall assessment of the demonstration project after about four years of data have been collected to provide sufficient time for policy-makers during the fifth year to make a decision on broader government application, extension of the project, or expiration after the 5-year period.

IX. Costs

A. Buy-in Costs

Upon conversion to the demonstration system many employees will receive an increase in basic pay for the prorated time in grade towards their next within-grade increase. However, these costs will be offset by the elimination of within-grade step increases that otherwise would have occurred.

B. Recurring Costs

All funding will be provided through the organization's budget. Each project program area will maintain compensation during the project at the level it would have reached under the current system. No additional funding will be requested specifically for this project; all costs will be charged to available funds through existing appropriations. To ensure appropriate carryover of costs from pre-project to project years, a base assessment will be made using 3 base years: Fiscal Years 2005, 2006, and 2007. For example, data associated with average annual salary, pay increases and promotions, turnover, and other relevant data will be collected to ensure a thorough analysis of costs which are impacted by pay banding. Budget discipline will be required and achieved by imposing specific funding principles. Finally, both longitudinal and site comparisons will be used to ensure that spending remains within acceptable limits.

X. Waiver of Laws and Regulations Required

A. Title 5, United States Code

Chapter 35, section 3594: Saved pay for former members of the Senior Executive Service (only to the extent necessary to (1) bar employees with a rating of record lower than Fully Successful from receiving saved rate increases under 5 U.S.C. 3594(c)(2); (2) provide a saved rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (3) provide the range maximum rate used to compute saved rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employees with an Outstanding rating of record; and (4) provide when a frozen saved rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the saved rate will be terminated and the employee's pay will be set at an adjusted rate equal to the saved rate).

Chapter 51: Classification (except that (1) section 5103 is retained and modified after ''finally'' to read ''the coverage of positions and employees under this modified classification system,'' (2) sections 5111 and 5112 are retained with ''grade'' replaced by ''pay bands'' and (3) for the purpose of applying any other laws, regulations, or policies that refer to GS employees or to chapter 51 of title 5, United States Code, the modified classification system established under this plan must be considered to be a GS classification system under chapter 51; this includes, but is not limited to, the reference to the General Schedule in section 5545(d) (relating to hazard pay)).

Chapter 53, section 5302(1)(A), (8) and (9): Definitions (only to the extent necessary to provide that employees under the demonstration project are not considered to be GS employees for the purposes of annual adjustments under section 5303 or similar provision of law governing annual adjustments for employees covered by section 5303).

Chapter 53, section 5303: Annual adjustments to pay schedules.

Chapter 53, section 5304: Locality-based comparability payments (only to the extent necessary to (1) provide a locality rate may not exceed the rate for EX–IV plus 5 percent for employees in the upper range extension and (2) apply an ''effective'' locality pay percentage for employees in the upper range extension under circumstances described in the plan).

Chapter 53, section 5305: Special pay authority.

Chapter 53, subchapter III: General Schedule pay rates (except that, for purposes of applying any other laws, regulations, or policies that refer to GS employees or to subchapter III of chapter 53 of title 5, United States Code, the modified pay system established under this plan must be considered to be a GS pay system established under such subchapter III, except as otherwise provided in this plan; this includes, but is not limited to, references to the General Schedule in section 5304 (relating to locality pay), section 5545(d) (relating to hazard pay), and sections 5753–5754 (dealing with recruitment, relocation, and retention incentives).

Chapter 53, section 5362: Grade retention.

Chapter 53, section 5363: Pay retention (only to the extent necessary to (1) Replace ''grade'' with ''pay band;'' (2) bar employees with a rating of record lower than Fully Successful from receiving retained rate increases under 5 U.S.C. 5363(b)(2)(B); (3) provide that pay retention provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total pay rate is not reduced; (4) provide the pay (including any locality adjustment or staffing supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (5) provide a retained rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (6) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for

an employees with an Outstanding rating of record; and (7) provide when a retained rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Chapter 55, section 5542(a): Overtime rates (only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category that would otherwise apply to an employee (but for the existence of the demonstration project) is deemed to be the ''applicable special rate of pay'' in determining the overtime hourly rate cap).

Chapter 55, section 5547: Limitation on premium pay (only to the extent necessary to provide that an applicable staffing supplement is added to the GS–15, step 10, rate in lieu of the applicable locality payment).

Chapter 59, section 5941: Cost-of-living allowances and post differentials (only to the extent necessary to provide that employees in the demonstration project pay system are eligible for coverage under section 5941).

Chapter 75, section 7512(3): Adverse actions (only to the extent necessary to replace ''grade'' with ''pay band'').

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement increase as a result of receiving a rating of record below Fully Successful).

Note: If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, FSIS may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. FSIS must notify OPM when any such waiver is terminated.

B. Title 5, Code of Federal Regulations

Part 330, subpart B, section 330.201: Establishment and maintenance of Reemployment Priority List (RPL) (only to the extent necessary to establish and maintain a reemployment priority list exclusively for FSIS competitive service demonstration project employees).

Part 351, subpart D, section 351.402: Competitive area (only to the extent necessary to permit the use of career paths in conjunction with organizational units and geographic locations when establishing competitive areas).

Part 351, subpart D, section 351.403: Competitive level (only to the extent necessary to replace ''same grade'' with ''same pay band'').

Part 351, subpart G, section 351.701: Assignment involving displacement (only to the extent necessary to replace ''three grades'' with ''one pay band'' and ''five grades'' with ''two pay bands'').

Part 359, subpart G, section 359.705: Pay (only to the extent necessary to (1) bar employees with a rating of record lower than Fully Successful from receiving a saved rate increase under 5 CFR 359.705(d)(1)); (2) provide a saved rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (3) provide the range maximum rate used to compute saved rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employees with an Outstanding rating of record; and (4) provide when a saved rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the saved rate will be terminated and the employee's pay will be set at an adjusted rate equal to the saved rate).

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under section III.C.3 or 4 of this project plan).

Part 511, subpart B: Coverage of the General Schedule.

Part 511, section 511.607: Nonappealable issues.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention.

Part 531, subpart B: Determining Rate of Basic Pay.

Part 531, subpart D: Within-Grade Increases.

Part 531, subpart E: Quality Step Increases.

Part 531, section 531.604: Determining an employee's locality rate (only to the extent necessary to apply an ''effective'' locality pay percentage for employees in the upper range extension under circumstances described in the plan).

Part 531, section 531.606: Maximum limits on locality rates (only to the extent necessary to provide a locality rate may not exceed the rate for EX–IV plus 5 percent for employees in the upper range extension).

Part 536, subpart B: Grade Retention.

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) replace ''grade'' with ''pay band;'' (2) bar employees with a rating of record lower than Fully Successful from receiving retained rate increases under 5 CFR 536.305; (3) provide that pay retention provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total pay rate is not reduced); (4) provide that a retained rate may not exceed the rate for EX–IV plus 5 percent; (5) provide the pay (including any locality adjustment or staffing supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (6) provide a retained rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (7) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employees with an Outstanding rating of record; and (8) provide when a retained rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Part 550, sections 550.106–107: Biweekly and annual maximum earnings limitation (only to the extent necessary to provide that an applicable staffing supplement is added to the GS–15, step 10, rate in lieu of the applicable locality payment).

Part 550, section 550.113(a): Computation of overtime pay (only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category that would otherwise apply to an employee (but for the existence of the demonstration project) is deemed to be the ''applicable special rate of pay'' in determining the overtime hourly rate cap).

Part 550, section 550.703: Definitions (to the extent necessary to modify paragraph (c)(4) of the definition of

''reasonable offer'' by replacing ''two grade or pay levels'' with ''one pay band level'' and ''grade or pay level'' with ''pay band level'').

Part 591, subpart B, section 591.204: Cost-of-living allowances and post differentials (only to the extent necessary to provide that the demonstration project pay system is a qualifying pay plan).

Part 752, section 752.401(a)(3): Adverse actions (only to the extent necessary to replace ''grade'' with ''pay band'').

Part 752, section 752.401(a)(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement rate increase as a result of receiving a rating of record below Fully Successful).

Note: If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, FSIS may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. FSIS must notify OPM when any such waiver is terminated.

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Federal Register

Wednesday,
January 28, 2009

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Fossil-Fuel-Fired Steam Generators; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2005–0031; FRL–8748–2]

RIN 2060–AO61

Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971; Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. These amendments to the regulations are to add compliance alternatives for owners and operators of certain affected sources, eliminate the opacity standard for facilities with a particulate matter (PM) limit of 0.030 lb/million British thermal units (MMBtu) or less that choose to voluntarily install and use PM continuous emission monitors (CEMS) to demonstrate compliance with that limit, and to correct technical and editorial errors.

DATES: This final rule is effective on January 28, 2009. The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of January 28, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0031. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.* , confidential business information 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 *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, facsimile number (919) 541–5450, electronic mail (e-mail) address: *fellner.christian@epa.gov*.

SUPPLEMENTARY INFORMATION: *Outline.* The information presented in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document?
- C. Judicial Review

II. Background Information

III. Final Amendments and Response to Public Comments

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by this final action include, but are not limited to, the following:

Category	NAICS Code[1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	22112	Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/ tribal government	22112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric steam generating units in Indian Country.
Any industrial, commercial, or institutional facility using a steam generating unit as defined in 60.40b or 60.4c.	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.

[1] North American Industry Classification System (NAICS) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the

applicability criteria in § 60.40, § 60.40a, § 60.40b, or § 60.40c of 40 CFR part 60. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in § 63.13 of subpart A (General Provisions) of title 40 of the Code of Federal Regulations.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 30, 2009. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information

In response to petitions for reconsideration of the amendments to the new source performance standards for steam generating units that EPA promulgated on June 13, 2007 (72 FR 32710) filed by the Coke Oven Environmental Task Force, EPA proposed revised amendments to address issues for which the petitioners requested reconsideration (see docket entry EPA–HQ–OAR–2005–0031–0276). EPA also proposed certain other unrelated amendments it felt were appropriate. In sum, EPA proposed on June 12, 2008 (73 FR 33642) to amend subparts D, Da, Db, and Dc of 40 CFR part 60 to clarify the intent for applying and implementing specific rule requirements, provide additional compliance alternatives, and to correct unintentional technical omissions and editorial errors.

A 45-day comment period (June 12, 2008 to July 28, 2008) was provided to accept comments on the proposed rule. An opportunity for a public hearing was provided to allow any interested persons to present oral comments on the proposed rule. However, EPA did not receive a request for a formal public hearing, so a public hearing was not held. We received comments on the proposed amendments from 11 commenters during the comment period.

III. Final Amendments and Response to Public Comments

We are amending subparts D, Da, Db, and Dc of 40 CFR part 60 to add compliance alternatives for owners/operators of certain affected sources, to eliminate the opacity standard for certain facilities voluntarily using PM CEMS, and to correct technical and editorial errors. These amendments address issues raised by the Coke Oven Environmental Task Force, including an alternate sulfur dioxide (SO_2) limit during SO_2 control system maintenance and allowing the use of parametric monitoring of nitrogen oxide (NO_X) emissions for owners and operators of coke oven gas-fired (COG) steam generating units. In addition, we are specifying the opacity monitoring requirements for owners and operators of all affected facilities that are subject to an opacity limit, including owner and operators of COG-fired steam generating units, but exempt from the continuous opacity monitoring system (COMS) requirement. This action promulgates the amended regulatory language as proposed, except for those significant provisions identified below.

We are also finalizing several clarifications to correct technical and editorial errors and to amend the monitoring requirements for owners and operators of affected facilities that elect to install particulate matter continuous emission monitoring systems (PM CEMS). Owners and operators of affected facilities that install a PM CEMS will be exempt from the opacity standard as long as they are complying with a federally enforceable permit limiting PM emissions to 0.030 pounds per million British thermal units or less. In addition, owner and operators of affected facilities that elect to install PM CEMS will be required to measure and report emissions of condensable PM.

Minor revisions to the proposed regulatory language were also made to clarify specific provisions or to correct unintentional technical omissions and terminology, typographical, printing, and grammatical errors that were identified in the proposed rule either as a result of comments we received or based on our own subsequent review of the text. One change revises appropriate definitions and requirements in subpart Da to clarify the applicability and implementation of the subpart Da provisions to integrated coal gasification combined cycle electric utility power plants. Another change clarifies the fact that not all combined cycle facilities that burn solid derived fuels are subject to the subpart.

The final amendments promulgated by this action reflect EPA's consideration of the comments received on the proposal. EPA's responses to the substantive public comments on the proposal are presented in a comment summary and response document available in Docket ID No. EPA–HQ–OAR–2005–0031. A summary of selected public comments and our responses is as follows.

Comment: Several commenters generally support the exemption of affected facilities using PM CEMS from the opacity standard. However, the commenters requested that EPA exempt those affected facilities opting to use PM CEMS from the opacity standard without imposing conditions for additional condensable PM or opacity tests. The commenters stated the EPA's proposed method for measuring condensable PM (Method 202) is flawed and significantly overstates the amount of condensable PM, and noted that Method 202 itself condenses gaseous emissions that would not be condensing in the flue gas. They also noted that further improvements of Method 202 must be made before it is required as the method to measure condensable PM.

Response: The opacity standard and all opacity monitoring requirements have been eliminated for owner/operators of affected facilities complying with a federally enforceable PM limit of 0.030 lb/MMBtu or less who voluntarily elect to use a PM CEMS to demonstrate continuous compliance with the PM limit. The contribution of filterable PM to opacity at these emission levels is generally negligible, and sources with mass limits at this level or less will operate with little or no visible emissions (*i.e.* less than 5 percent opacity). As a result, EPA believes that an opacity standard is no longer necessary for these sources since the PM mass emission rate standard is substantially tighter than the opacity standard and the mass of PM emissions will be continually monitored.

We concluded, however, that it is only appropriate to eliminate the opacity standard and associated opacity monitoring for owners/operators of facilities complying with a PM limit of

0.030 lb/MMBtu or less. At this emission rate, the presence of visible emissions may indicate that the PM control device is not operating properly. This amended NSPS does not require any corrective action in such a case as long as the PM CEMS is complying with all applicable federal requirements. However, PM CEMS readings cannot be verified as readily as other CEMS, and since recalibration requires PM performance tests, baseline opacity readings can be a valuable secondary check on control device performance and PM emissions. The local permitting authority does have the discretion to require an investigation to determine the cause of the visible emissions. The presence of such emissions is not, however, necessarily evidence of a violation of the PM standard. In situations where the owner/operator of a facility has documented visible emissions during the initial or subsequent PM CEMS calibration testing or documented trends in PM CEMS readings that correlate to the visible emissions, the relative amount of visible emissions can still be used by the local permitting authority as a secondary check that both the PM control device and PM CEMS are operating properly. While these facilities will not be required to install continuous opacity monitoring systems (COMS), if a facility decided to or is required by the permitting authority to install a COMS, the data would be useful as a secondary check on PM emissions and proper operation of the PM control device and to verify that the PM CEMS is operating properly. Owners/operators of affected facilities with a PM limit greater than 0.030 lb/MMBtu that elect to install PM CEMS may have some visible emissions, will still be subject to an opacity limit, and will be required to either use a COMS or perform periodic visual inspections to comply with the opacity standard.

In addition, we have concluded it is appropriate to require condensable PM testing for owners/operators of affected facilities that elect to use PM CEMS to determine the contribution of condensable PM to total PM emissions. We will use this data to determine if the condensable PM emissions from steam generating units have a significant health and/or environmental impact and whether condensable PM should be included in future amendments to the PM standard. By early 2009, we intend to propose amendments to Method 202 that will address the concerns about artifact measurement. Since the rule will not be finalized until early in 2010, we are delaying the requirement to perform condensable PM testing until July 1, 2010 or until Method 202 is revised to minimize artifact measurement, whichever is later.

Comment: Several commenters oppose increasing the Method 9 monitoring frequency. The commenters stated that increasing the frequency from annually to a weekly, monthly, or quarterly basis without identifying any particular issue of concern that might occur on a weekly, monthly, or quarterly basis is arbitrary, unnecessary, overly burdensome, and would provide little environmental benefit. In addition, one commenter supports the use of Method 22 as an alternative to Method 9 for those sources that are expected to have no significant visible emissions. However, three 1-hour Method 22 observations would actually take significantly longer than 3 hours. Under Method 22, observers are instructed not to continuously view emissions for more than 15–20 minutes at a time, and that breaks of 5–10 minutes should be taken between each observation. Following these criteria, each 1-hour observation would take at least one and a half hours. Finally, one commenter requested that EPA allow for owners/operators of affected facilities that comply with subpart D, Da, Db, or Dc, by the use of a fabric filter, the alternative of installing and operating triboelectric bag leak detectors as an alternative to using a COMS.

Response: We have concluded that the appropriate approach is to base the frequency of visible emissions monitoring on the level of visible emissions detected during the most recent observation. Owners/operators of facilities that elect to not use a COMS to demonstrate compliance with the opacity limit will conduct at least an initial Method 9 performance test. The frequency of the required subsequent Method 9 testing is based on the results of the highest 6-minute opacity observed during the most recent performance test. Owners/operators of affected facilities where the maximum 6-minute opacity reading is greater than 10 percent will be required to conduct monthly Method 9 performance testing; owners/operators of affected facilities where the maximum 6-minute opacity reading is between 5 percent and 10 percent will be required to conduct quarterly Method 9 performance testing; owners/operators of affected facilities with some visible emissions but where the maximum 6-minute opacity reading is 5 percent or less will be required to conduct semi-annual Method 9 performance testing; and owners/operators of affected facilities with no visible emissions will only be required to conduct an annual Method 9 performance test.

As an alternative, owners/operators of affected facilities where maximum 6-minute opacity readings from the most recent Method 9 performance test is less than 10 percent may elect to use either Method 22 or the digital opacity monitoring system in lieu of subsequent Method 9 performance testing. The proposed amendments required a total of 3 hours of observation annually, but did not specify when or for how long those observations would be done. We have concluded it is appropriate to decrease the length of each observation to a minimum of 10 minutes, but to increase the frequency to daily observations. This approach both minimizes the burden of this option while increasing protection to the environment, as observations will be performed throughout the year. If an owner/operator of an affected facility observes visible emissions in excess of 5 percent during any observation and is unable to take corrective action, they will be required to either conduct a Method 9 performance test with the previously specified frequency or to install a COMS. To maintain consistency in the operation of the digital opacity monitoring system, the EPA Administrator will approve opacity monitoring plans for owners/operators that elect to use the digital opacity monitoring system to detect the presence of visible emissions.

Finally, we have concluded it is appropriate to allow owners/operators of affected facilities subject to subparts Da, Db, and Dc, and who install, maintain, and operate a bag leak detection system, the option to use periodic visual inspections of plume opacity as an alternative to monitoring opacity with a COMS. Modern baghouses often operate with no visible emissions, and a bag leak detection system will allow owners/operators to identify potential problems with the control device and repair the problems prior to increases in opacity.

Comment: Several commenters oppose the proposed requirement to electronically submit performance evaluation test date to EPA's WebFIRE database. One commenter stated that EPA has not: (1) Provided any rationale for requiring the data to be reported and entered electronically; (2) provided any information on the proposed reporting format or mechanism to allow interested parties to understand what sort of burden this requirement would impose and whether the requirement is more or less burdensome than other forms of reporting; or (3) provided any mechanism for sources to confirm the

authenticity of data submitted to this Web site for their facility. Furthermore, before EPA can impose any new reporting requirement, EPA must comply with the requirements of the Paperwork Reduction Act and also address whether the submission meets the requirements of the Cross-Media Electronic Reporting Rule (CROMERR), which is codified at 40 CFR part 3. Another commenter stated that any reporting should not be required of sources until the WebFIRE is fully operational. A formal regulation is not the proper venue to ''troubleshoot'' communications with an external database for the regulated community.

Response: EPA does not expect WebFIRE and the associated Electronic Reporting Tool (ERT) to be operational until early 2011, and we are delaying the requirement until July 1, 2011. We do not expect electronic submittal of performance test information to have any significant costs or impacts to industry (because we are not requiring additional testing or software and source testing companies already compile these data electronically), and since submission of data directly to EPA is only a requirement for facilities that voluntary elect to use PM CEMS to demonstrate compliance with the PM limit, the ICR does not need to be amended. In addition, as an alternate to using the ERT we are allowing owner/operators to mail the test report directly to EPA. Finally, we fully expect the ERT to be compliant with CROMERR before reporting is required in 2011.

Comment: Two commenters requested that EPA reconsider the Agency's decision to include direct contact water heaters in the definition of ''steam generating unit'' used for determining applicability of the requirements under subparts Db and Dc because it is contrary to previous EPA applicability determinations, and it is confusing to include water heaters in a regulation for steam generating units.

Response: The definition of steam generating unit includes direct contact water heaters and as such, these units meet the applicability of subpart Dc. However, we recognize that two source-specific letters exempt individual direct contact water heaters from the applicability of subpart Dc of 40 CFR part 60, and owners/operators of the units in question reasonably relied on these determinations and have not been complying with subpart Dc to date. We do not intend to reverse these source specific determinations or to require retroactive reporting for any owner/operators of similar facilities that relied on these determinations and have not been maintaining the proper records, but we are clarifying and confirming that direct contact water heaters have always been subject to subpart Dc, and records shall be maintained from June 12, 2008 onward, consistent with the definition of steam generating unit.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final rule results in no changes to the information collection requirements of the existing standards of performance and will have no impact on the information collection estimate of projected cost and hour burden made and approved by the OMB during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. However, OMB previously approved the information collection requirements contained in the existing regulations (subparts Da, Db, and Dc of 40 CFR part 60) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2060–0023 for subpart Da of 40 CFR part 60, 2060–0072 for subpart Db of 40 CFR part 60, and 2060–0202 for subpart Dc of 40 CFR part 60. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the final amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA is minimizing the opacity monitoring requirements for owner/operators of affected facilities subject to an opacity standard but exempt from the COMS requirement. We have therefore concluded that this final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This rule does not change the overall cost of the rule and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and trial governments, in the aggregate, or the private sector in any 1 year. Thus, this final rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule modifies previously established requirements and does not impose any new obligations or enforceable duties on any small governments.

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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will not impose substantial direct compliance costs on State or local governments; it will not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). While utility steam generating units are located on tribal lands, EPA is not aware of any that are owned by tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this final rule is not likely to have any adverse energy effects because it generally only clarifies our intent and corrects errors in the existing rule.

I. National Technology Transfer Advancement Act

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

This final rule involves technical standards. EPA has decided to use ASTM D975–08a, ''Standard Specification for Diesel Fuel Oils,'' for defining diesel fuel oil. This standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959.

EPA has also decided to use EPA Method 202 (40 CFR part 51, appendix M). The Agency has not found any alternative methods. The search and review results are in the docket for this regulation.

Under 40 CFR 60.13(i) of the NSPS General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

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 practical 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 has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not change any emission limits and, therefore, does not affect the level of protection provided to human health or the environment.

H. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing these final amendments 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 final rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on January 28, 2009.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 26, 2008.

Stephen L. Johnson,

Administrator.

Editorial Note: This document was received in the Office of the Federal Register on Thursday, January 8, 2009.

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 60.17 is amended by redesignating paragraphs (a)(17) through (a)(92) as paragraphs (a)(18) through (a)(93) and by adding new paragraph (a)(17) to read as follows:

§ 60.17 Incorporations by Reference.

* * * * *

(a) * * *

(17) ASTM D975–08a, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.41b of subpart Db of this part and 60.41c of subpart Dc of this part.

* * * * *

Subpart D—[Amended]

■ 3. Section 60.42 is amended by adding paragraph (c) to read as follows:

§ 60.42 Standard for particulate matter (PM).

* * * * *

(c) As an alternate to meeting the requirements of paragraph (a) of this section, an owner or operator that elects to install, calibrate, maintain, and operate a continuous emissions monitoring systems (CEMS) for measuring PM emissions can petition the Administrator (in writing) to comply with § 60.42Da(a) of subpart Da of this part. If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.43Da(a) of subpart Da of this part.

■ 4. Section 60.43 is amended by revising paragraph (d) to read as follows:

* * * * *

§ 60.43 Standard for sulfur dioxide (SO_2).

(d) As an alternate to meeting the requirements of paragraphs (a) and (b) of this section, an owner or operator can petition the Administrator (in writing) to comply with § 60.43Da(i)(3) of subpart Da of this part or comply with § 60.42b(k)(4) of subpart Db of this part, as applicable to the affected source. If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.43Da(i)(3) of subpart Da of this part or § 60.42b(k)(4) of subpart Db of this part, as applicable to the affected source.

■ 5. Section 60.45 is amended to read as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraphs (b)(1) and (b)(6)(i)(C) and adding paragraph (b)(7);

■ c. By revising paragraphs (g)(2), (g)(3), and (g)(4); and

■ d. By adding paragraph (h).

§ 60.45 Emissions and fuel monitoring.

(a) Each owner or operator shall install, calibrate, maintain, and operate continuous opacity monitoring system (COMS) for measuring opacity and a CEMS for measuring SO_2 emissions, NO_X emissions, and either oxygen (O_2) or carbon dioxide (CO_2) except as provided in paragraph (b) of this section.

(b) * * *

(1) For a fossil-fuel-fired steam generator that burns only gaseous or liquid fossil fuel (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less and that does not use post-combustion technology to reduce emissions of SO_2 or PM, CEMS for measuring the opacity of emissions and SO2 emissions are not required if the owner or operator monitors SO_2 emissions by fuel sampling and analysis or fuel receipts.

* * * * *

(6) * * *

(i) * * *

(C) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. The 1-hour averages are calculated using the data points required in § 60.13(h)(2).

* * * * *

(7) The owner or operator of an affected facility subject to an opacity standard under § 60.42 and that elects to not install a COMS because the affected facility burns only fuels as specified under paragraph (b)(1) of this section, monitors PM emissions as specified under paragraph (b)(5) of this section, or monitors CO emissions as specified under paragraph (b)(6) of this section shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.42 and shall comply with either paragraphs (b)(7)(i), (b)(7)(ii), or (b)(7)(iii) of this section. If during the initial 60 minutes of observation all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent, the observation period may be reduced from 3 hours to 60 minutes.

(i) Except as provided in paragraph (b)(7)(ii) or (b)(7)(iii) of this section, the owner or operator shall conduct subsequent Method 9 of appendix A–4 of this part performance tests using the procedures in paragraph (b)(7) of this section according to the applicable schedule in paragraphs (b)(7)(i)(A) through (b)(7)(i)(D) of this section, as determined by the most recent Method 9 of appendix A–4 of this part performance test results.

(A) If no visible emissions are observed, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 12 calendar months from the date that the most recent performance test was conducted;

(B) If visible emissions are observed but the maximum 6-minute average opacity is less than or equal to 5 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 6 calendar months from the date that the most recent performance test was conducted;

(C) If the maximum 6-minute average opacity is greater than 5 percent but less than or equal to 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 3 calendar months from the date that the most recent performance test was conducted; or

(D) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 30 calendar days from the date that the most recent performance test was conducted.

(ii) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 of this part performance test, elect to perform subsequent monitoring using Method 22 of appendix A–7 of this part according to the procedures specified in paragraphs (b)(7)(ii)(A) and (B) of this section.

(A) The owner or operator shall conduct 10 minute observations (during normal operation) each operating day the affected facility fires fuel for which an opacity standard is applicable using Method 22 of appendix A–7 of this part and demonstrate that the sum of the occurrences of any visible emissions is not in excess of 5 percent of the observation period (*i.e.*, 30 seconds per 10 minute period). If the sum of the occurrence of any visible emissions is greater than 30 seconds during the initial 10 minute observation, immediately conduct a 30 minute observation. If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.*, 90 seconds per 30 minute period) the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.*, 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures

in paragraph (b)(7) of this section within 30 calendar days according to the requirements in § 60.46(b)(3).

(B) If no visible emissions are observed for 30 operating days during which an opacity standard is applicable, observations can be reduced to once every 7 operating days during which an opacity standard is applicable. If any visible emissions are observed, daily observations shall be resumed.

(iii) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 performance tests, elect to perform subsequent monitoring using a digital opacity compliance system according to a site-specific monitoring plan approved by the Administrator. The observations shall be similar, but not necessarily identical, to the requirements in paragraph (b)(7)(ii) of this section. For reference purposes in preparing the monitoring plan, see OAQPS ''Determination of Visible Emission Opacity from Stationary Sources Using Computer-Based Photographic Analysis Systems.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality and Planning Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Preliminary Methods.

* * * * *

(g) * * *

(2) *Sulfur dioxide.* Excess emissions for affected facilities are defined as:

(i) For affected facilities electing not to comply with § 60.43(d), any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) of SO_2 as measured by a CEMS exceed the applicable standard in § 60.43; or

(ii) For affected facilities electing to comply with § 60.43(d), any 30 operating day period during which the average emissions (arithmetic average of all one-hour periods during the 30 operating days) of SO_2 as measured by a CEMS exceed the applicable standard in § 60.43. Facilities complying with the 30-day SO_2 standard shall use the most current associated SO_2 compliance and monitoring requirements in §§ 60.48Da and 60.49Da of subpart Da of this part or §§ 60.45b and 60.47b of subpart Db of this part, as applicable.

(3) *Nitrogen oxides.* Excess emissions for affected facilities using a CEMS for measuring NO_X are defined as:

(i) For affected facilities electing not to comply with § 60.44(e), any three-hour period during which the average emissions (arithmetic average of three contiguous one-hour periods) exceed the applicable standards in § 60.44; or

(ii) For affected facilities electing to comply with § 60.44(e), any 30 operating day period during which the average emissions (arithmetic average of all one-hour periods during the 30 operating days) of NO_X as measured by a CEMS exceed the applicable standard in § 60.44. Facilities complying with the 30-day NO_X standard shall use the most current associated NO_X compliance and monitoring requirements in §§ 60.48Da and 60.49Da of subpart Da of this part.

(4) *Particulate matter.* Excess emissions for affected facilities using a CEMS for measuring PM are defined as any boiler operating day period during which the average emissions (arithmetic average of all operating one-hour periods) exceed the applicable standards in § 60.42. Affected facilities using PM CEMS must follow the most current applicable compliance and monitoring provisions in §§ 60.48Da and 60.49Da of subpart Da of this part.

(h) The owner or operator of an affected facility subject to the opacity limits in § 60.42 that elects to monitor emissions according to the requirements in § 60.45(b)(7) shall maintain records according to the requirements specified in paragraphs (h)(1) through (3) of this section, as applicable to the visible emissions monitoring method used.

(1) For each performance test conducted using Method 9 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (h)(1)(i) through (iii) of this section.

(i) Dates and time intervals of all opacity observation periods;

(ii) Name, affiliation, and copy of current visible emission reading certification for each visible emission observer participating in the performance test; and

(iii) Copies of all visible emission observer opacity field data sheets;

(2) For each performance test conducted using Method 22 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (h)(2)(i) through (iv) of this section.

(i) Dates and time intervals of all visible emissions observation periods;

(ii) Name and affiliation for each visible emission observer participating in the performance test;

(iii) Copies of all visible emission observer opacity field data sheets; and

(iv) Documentation of any adjustments made and the time the adjustments were completed to the affected facility operation by the owner or operator to demonstrate compliance with the applicable monitoring requirements.

(3) For each digital opacity compliance system, the owner or operator shall maintain records and submit reports according to the requirements specified in the site-specific monitoring plan approved by the Administrator.

■ 6. Section 60.46 is amended by revising paragraph (d)(2) to read as follows:

§ 60.46 Test methods and procedures.

* * * * *

(d) * * *

(2) For Method 5 or 5B of appendix A–3 of this part, Method 17 of appendix A–6 of this part may be used at facilities with or without wet FGD systems if the stack gas temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of sections 8.1 and 11.1 of Method 5B of appendix A–3 of this part may be used with Method 17 of appendix A–6 of this part only if it is used after wet FGD systems. Method 17 of appendix A–6 of this part shall not be used after wet FGD systems if the effluent gas is saturated or laden with water droplets.

* * * * *

Subpart Da—[Amended]

■ 7. Section 60.40Da is amended by revising paragraphs (a) and (b), and adding paragraph (e) to read as follows:

§ 60.40Da Applicability and designation of affected facility.

(a) Except as specified in paragraph (e) of this section, the affected facility to which this subpart applies is each electric utility steam generating unit:

(1) That is capable of combusting more than 73 megawatts (MW) (250 million British thermal units per hour (MMBtu/hr)) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) For which construction, modification, or reconstruction is commenced after September 18, 1978.

(b) An IGCC electric utility steam generating unit (both the stationary combustion turbine and any associated duct burners) is subject to this part and is not subject to subpart GG or KKKK of this part if both of the conditions specified in paragraphs (b)(1) and (2) of this section are met.

(1) The IGCC electric utility steam generating unit is capable of combusting more than 73 MW (250 MMBtu/hr) heat input of fossil fuel (either alone or in combination with any other fuel); and

(2) The IGCC electric utility steam generating unit commenced construction, modification, or reconstruction after February 28, 2005.

* * * * *

(e) Applicability of the requirement of this subpart to an electric utility combined cycle gas turbine other than an IGCC electric utility steam generating unit is as specified in paragraphs (e)(1) and (2) of this section.

(1) Heat recovery steam generators used with duct burners and associated with an electric utility combined cycle gas turbine that are capable of combusting more than 73 MW (250 MMBtu/hr) heat input of fossil fuel are subject to this subpart except in cases when the heat recovery steam generator meets the applicability requirements and is subject to subpart KKKK of this part.

(2) For heat recovery steam generators use with duct burners subject to this subpart, only emissions resulting from the combustion of fuels in the steam generating unit (i.e. duct burners) are subject to the standards under this subpart. (The emissions resulting from the combustion of fuels in the stationary combustion turbine engine are subject to subpart GG or KKK, as applicable, of this part).

■ 8. Section 60.41Da is amended by revising the definitions of ''Gross output,'' ''Integrated gasification combined cycle electric utility steam generating unit or IGCC electric utility steam generating unit,'' ''Natural gas,'' and ''Petroleum'' to read as follows:

§ 60.41Da Definitions.

* * * * *

Gross output means the gross useful work performed by the steam generated and, for an IGCC electric utility steam generating unit, the work performed by the stationary combustion turbines. For a unit generating only electricity, the gross useful work performed is the gross electrical output from the unit's turbine/generator sets. For a cogeneration unit, the gross useful work performed is the gross electrical or mechanical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output or to enhance the performance of the unit (*i.e.*, steam delivered to an industrial process).

* * * * *

Integrated gasification combined cycle electric utility steam generating unit or *IGCC electric utility steam generating unit* means an electric utility combined cycle gas turbine that is designed to burn fuels containing 50 percent (by heat input) or more solid-derived fuel not meeting the definition of natural gas. No solid fuel is directly burned in the unit during operation.

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by the American Society of Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17); or

(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 34 and 43 megajoules (MJ) per dry standard cubic meter (910 and 1,150 Btu per dry standard cubic foot).

* * * * *

Petroleum means crude oil or a fuel derived from crude oil, including, but not limited to, distillate oil, and residual oil.

* * * * *

■ 9. Section 60.42Da is amended by revising paragraph (b) to read as follows:

§ 60.42Da Standard for particulate matter (PM).

* * * * *

(b) On and after the date the initial PM performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. Owners and operators of an affected facility that elect to install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring PM emissions according to the requirements of this subpart are exempt from the opacity standard specified in this paragraph b.

* * * * *

■ 10. Section 60.48Da is amended to read as follows:

■ a. By revising paragraph (g)(3);
■ b. By revising the first sentence of paragraph (j)(2);
■ c. By revising paragraph (n);
■ d. By revising paragraph (o) introductory text;
■ e. By revising paragraph (o)(1);
■ f. By revising paragraph (o)(2)(ii);
■ g. By revising the last sentence of paragraph (o)(2)(iii);
■ h. By revising paragraphs (o)(2)(iv) and (o)(2)(vi);
■ i. By revising paragraphs (o)(3)(i) and (o)(3)(ii);
■ j. By revising the first sentence of paragraph (o)(3)(iii);
■ k. By revising the last sentence of paragraph (o)(3)(v);
■ l. By revising paragraph (o)(4)(i)(E);
■ m. By revising the first sentence of paragraph (o)(4)(ii);
■ n. By revising paragraphs (o)(4)(ii)(F), (o)(4)(v) and (o)(4)(5);
■ o. By revising paragraph (p) introductory text and (p)(2); and
■ p. By adding paragraph (q).

§ 60.48Da Compliance provisions.

* * * * *

(g) * * *

(3) Compliance with applicable daily average PM emission limitations is determined by calculating the arithmetic average of all hourly emission rates for PM each boiler operating day, except for data obtained during startup, shutdown, and malfunction. Averages are only calculated for boiler operating days that have valid data for at least 18 hours of unit operation during which the standard applies. Instead, all of the valid hourly emission rates of the operating day(s) not meeting the minimum 18 hours valid data daily average requirement are averaged with all of the valid hourly emission rates of the next boiler operating day with 18 hours or more of valid PM CEMS data to determine compliance.

* * * * *

(j) * * *

(2) The owner or operator of an affected duct burner may elect to determine compliance by using the CEMS specified under § 60.49Da for measuring NO_X and oxygen (O_2) (or carbon dioxide (CO_2)) and meet the requirements of § 60.49Da. * * *

* * * * *

(n) *Compliance provisions for sources subject to § 60.42Da(c)(1).* The owner or operator of an affected facility subject to § 60.42Da(c)(1) shall calculate PM emissions by multiplying the average hourly PM output concentration (measured according to the provisions of § 60.49Da(t)), by the average hourly flow rate (measured according to the provisions of § 60.49Da(l) or § 60.49Da(m)), and divided by the average hourly gross energy output (measured according to the provisions of § 60.49Da(k)). Compliance with the

emission limit is determined by calculating the arithmetic average of the hourly emission rates computed for each boiler operating day.

(o) *Compliance provisions for sources subject to § 60.42Da(c)(2) or (d).* Except as provided for in paragraph (p) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, shall demonstrate compliance with each applicable emission limit according to the requirements in paragraphs (o)(1) through (o)(5) of this section.

(1) You must conduct a performance test to demonstrate initial compliance with the applicable PM emissions limit in § 60.42Da(c)(2) or (d) by the applicable date specified in § 60.8(a). Thereafter, you must conduct each subsequent performance test within 12 calendar months following the date the previous performance test was required to be conducted. You must conduct each performance test according to the requirements in § 60.8 using the test methods and procedures in § 60.50Da. The owner or operator of an affected facility that has not operated for 60 consecutive calendar days prior to the date that the subsequent performance test would have been required had the unit been operating is not required to perform the subsequent performance test until 30 calendar days after the next boiler operating day. Requests for additional 30 day extensions shall be granted by the relevant air division or office director of the appropriate Regional Office of the U.S. EPA.

(2) * * *

(ii) You must comply with the quality assurance requirements in paragraphs (o)(2)(ii)(A) through (E) of this section.

* * * * *

(iii) * * * If your opacity baseline level is less than 5.0 percent, then the opacity baseline level is set at 5.0 percent.

(iv) You must evaluate the preceding 24-hour average opacity level measured by the COMS each boiler operating day excluding periods of affected facility startup, shutdown, or malfunction. If the measured 24-hour average opacity emission level is greater than the baseline opacity level determined in paragraph (o)(2)(iii) of this section, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of the high opacity incident and take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to reduce the measured 24-hour average opacity to a level below the baseline opacity level. In cases when a wet scrubber is used in combination with another PM control device that serves as the primary PM control device, the wet scrubber must be maintained and operated.

* * * * *

(vi) If the measured 24-hour average opacity for your affected facility remains at a level greater than the opacity baseline level after 7 boiler operating days, then you must conduct a new PM performance test according to paragraph (o)(1) of this section and establish a new opacity baseline value according to paragraph (o)(2) of this section. This new performance test must be conducted within 60 days of the date that the measured 24-hour average opacity was first determined to exceed the baseline opacity level unless a waiver is granted by the permitting authority.

(3) * * *

(i) You must calibrate the ESP predictive model with each PM control device used to comply with the applicable PM emissions limit in § 60.42Da(c)(2) or (d) operating under normal conditions. In cases when a wet scrubber is used in combination with an ESP to comply with the PM emissions limit, the wet scrubber must be maintained and operated.

(ii) You must develop a site-specific monitoring plan that includes a description of the ESP predictive model used, the model input parameters, and the procedures and criteria for establishing monitoring parameter baseline levels indicative of compliance with the PM emissions limit. You must submit the site-specific monitoring plan for approval by the permitting authority. For reference purposes in preparing the monitoring plan, see the OAQPS ''Compliance Assurance Monitoring (CAM) Protocol for an Electrostatic Precipitator (ESP) Controlling Particulate Matter (PM) Emissions from a Coal-Fired Boiler.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Continuous Emission Monitoring.

(iii) You must run the ESP predictive model using the applicable input data each boiler operating day and evaluate the model output for the preceding boiler operating day excluding periods of affected facility startup, shutdown, or malfunction. * * *

* * * * *

(v) * * * This new performance test must be conducted within 60 calendar days of the date that the model parameter was first determined to exceed its baseline level unless a waiver is granted by the permitting authority.

(4) * * *

(i) * * *

(E) Following initial adjustment, you must not adjust the averaging period, alarm set point, or alarm delay time without approval from the permitting authority except as provided in paragraph (d)(1)(vi) of this section.

* * * * *

(ii) You must develop and submit to the permitting authority for approval a site-specific monitoring plan for each bag leak detection system. * * *

* * * * *

(F) Corrective action procedures as specified in paragraph (o)(4)(iii) of this section. In approving the site-specific monitoring plan, the permitting authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

* * * * *

(v) If after any period composed of 30 boiler operating days during which the alarm rate exceeds 5 percent of the process operating time (excluding control device or process startup, shutdown, and malfunction), then you must conduct a new PM performance test according to paragraph (o)(1) of this section. This new performance test must be conducted within 60 calendar days of the date that the alarm rate was first determined to exceed 5 percent limit unless a waiver is granted by the permitting authority.

(5) An owner or operator of a modified affected facility electing to meet the emission limitations in § 60.42Da(d) shall determine the percent reduction in PM by using the emission rate for PM determined by the performance test conducted according to the requirements in paragraph (o)(1) of this section and the ash content on a mass basis of the fuel burned during each performance test run as determined by analysis of the fuel as fired.

(p) As an alternative to meeting the compliance provisions specified in paragraph (o) of this section, an owner

or operator may elect to install, evaluate, maintain, and operate a CEMS measuring PM emissions discharged from the affected facility to the atmosphere and record the output of the system as specified in paragraphs (p)(1) through (p)(8) of this section.

* * * * *

(2) Each CEMS shall be installed, evaluated, operated, and maintained according to the requirements in § 60.49Da(v).

* * * * *

(q) *Compliance provisions for sources subject to § 60.42Da(b).* An owner or operator of an affected facility subject to the opacity standard in § 60.42Da(b) shall monitor the opacity of emissions discharged from the affected facility to the atmosphere according to the requirements in § 60.49Da(a), as applicable to the affected facility.

■ 11. Section 60.49Da is amended to read as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraphs (b)(4) introductory text and (b)(4)(iii);

■ c. By revising paragraph (d);

■ d. By revising paragraph (i)(3);

■ e. By revising paragraph (k) introductory text;

■ f. By revising paragraph (t);

■ g. By revising paragraph (u);

■ h. By revising paragraphs (v) introductory text and (v)(2), and adding paragraph (v)(4); and

■ j. By adding paragraph (w) introductory text;

■ k. By revising paragraphs (w)(1) and (w)(2).

§ 60.49Da Emission monitoring.

(a) An owner or operator of an affected facility subject to the opacity standard in § 60.42Da(b) shall monitor the opacity of emissions discharged from the affected facility to the atmosphere according to the applicable requirements in paragraphs (a)(1) through (3) of this section.

(1) Except as provided for in paragraph (a)(2) of this section, the owner or operator of an affected facility, shall install, calibrate, maintain, and operate a COMS, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere. If opacity interference due to water droplets exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the SO_2 control system), alternate parameters indicative of the PM control system's performance and/or good combustion are monitored (subject to the approval of the Administrator).

(2) As an alternative to the monitoring requirements in paragraph (a)(1) of this section, an owner or operator of an affected facility that meets the conditions in either paragraph (a)(2)(i), (ii), or (iii) of this section may elect to monitor opacity as specified in paragraph (a)(3) of this section.

(i) The affected facility uses a fabric filter (baghouse) to meet the standards in § 60.42Da and a bag leak detection system is installed and operated according to the requirements in paragraphs § 60.48Da(o)(4)(i) through (v);

(ii) The affected facility burns only gaseous or liquid fuels (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less, and does not use a post-combustion technology to reduce emissions of SO_2 or PM; or

(iii) The affected facility meets all of the conditions specified in paragraphs (a)(2)(iii)(A) through (C) of this section.

(A) No post-combustion technology (except a wet scrubber) is used for reducing PM, SO_2, or carbon monoxide (CO) emissions;

(B) Only natural gas, gaseous fuels, or fuel oils that contain less than or equal to 0.30 weight percent sulfur are burned; and

(C) Emissions of CO discharged to the atmosphere are maintained at levels less than or equal to 1.4 lb/MWh on a boiler operating day average basis as demonstrated by the use of a CEMS measuring CO emissions according to the procedures specified in paragraph (u) of this section.

(3) The owner or operators of an affected facility that meets the conditions in paragraph (a)(2) of this section may, as an alternative to COMS, elect to monitor visible emissions using the applicable procedures specified in paragraphs (a)(3)(i) through (iv) of this section.

(i) The owner or operator shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11. If during the initial 60 minutes of the observation all the 6-minute averages are less than 10 percent and all the individual 15-second observations are less than or equal to 20 percent, then the observation period may be reduced from 3 hours to 60 minutes.

(ii) Except as provided in paragraph (a)(3)(iii) or (iv) of this section, the owner or operator shall conduct subsequent Method 9 of appendix A–4 of this part performance tests using the procedures in paragraph (a)(3)(i) of this section according to the applicable schedule in paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(D) of this section, as determined by the most recent Method 9 of appendix A–4 of this part performance test results.

(A) If no visible emissions are observed, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 12 calendar months from the date that the most recent performance test was conducted;

(B) If visible emissions are observed but the maximum 6-minute average opacity is less than or equal to 5 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 6 calendar months from the date that the most recent performance test was conducted;

(C) If the maximum 6-minute average opacity is greater than 5 percent but less than or equal to 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 3 calendar months from the date that the most recent performance test was conducted; or

(D) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 30 calendar days from the date that the most recent performance test was conducted.

(iii) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 of this part performance tests, elect to perform subsequent monitoring using Method 22 of appendix A–7 of this part according to the procedures specified in paragraphs (a)(3)(iii)(A) and (B) of this section.

(A) The owner or operator shall conduct 10 minute observations (during normal operation) each operating day the affected facility fires fuel for which an opacity standard is applicable using Method 22 of appendix A–7 of this part and demonstrate that the sum of the occurrences of any visible emissions is not in excess of 5 percent of the observation period (*i.e.*, 30 seconds per 10 minute period). If the sum of the occurrence of any visible emissions is greater than 30 seconds during the initial 10 minute observation, immediately conduct a 30 minute observation. If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.*, 90 seconds per 30 minute period) the owner or operator shall either document and adjust the

operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.*, 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures in paragraph (a)(3)(i) of this section within 30 calendar days according to the requirements in § 60.50Da(b)(3).

(B) If no visible emissions are observed for 30 operating days during which an opacity standard is applicable, observations can be reduced to once every 7 operating days during which an opacity standard is applicable. If any visible emissions are observed, daily observations shall be resumed.

(iv) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 performance tests, elect to perform subsequent monitoring using a digital opacity compliance system according to a site-specific monitoring plan approved by the Administrator. The observations shall be similar, but not necessarily identical, to the requirements in paragraph (a)(3)(iii) of this section. For reference purposes in preparing the monitoring plan, see OAQPS ''Determination of Visible Emission Opacity from Stationary Sources Using Computer-Based Photographic Analysis Systems.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality and Planning Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Preliminary Methods.

(b) * * *

(4) If the owner or operator has installed and certified a SO_2 CEMS according to the requirements of § 75.20(c)(1) of this chapter and appendix A to part 75 of this chapter, and is continuing to meet the ongoing quality assurance requirements of § 75.21 of this chapter and appendix B to part 75 of this chapter, that CEMS may be used to meet the requirements of this section, provided that:

* * * * *

(iii) The reporting requirements of § 60.51Da are met. The SO_2 and, if required, CO_2 (or O_2) data reported to meet the requirements of § 60.51Da shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the SO_2 data have been bias adjusted according to the procedures of part 75 of this chapter.

* * * * *

(d) The owner or operator of an affected facility not complying with an output based limit shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring the O_2 or carbon dioxide (CO_2) content of the flue gases at each location where SO_2 or NO_X emissions are monitored. For affected facilities subject to a lb/MMBtu SO_2 emission limit under § 60.43Da, if the owner or operator has installed and certified a CO_2 or O_2 monitoring system according to § 75.20(c) of this chapter and appendix A to part 75 of this chapter and the monitoring system continues to meet the applicable quality-assurance provisions of § 75.21 of this chapter and appendix B to part 75 of this chapter, that CEMS may be used together with the part 75 SO_2 concentration monitoring system described in paragraph (b) of this section, to determine the SO_2 emission rate in lb/MMBtu. SO_2 data used to meet the requirements of § 60.51Da shall not include substitute data values derived from the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

* * * * *

(i) * * *

(3) For affected facilities burning only fossil fuel, the span value for a COMS is between 60 and 80 percent. Span values for a CEMS measuring NO_X shall be determined using one of the following procedures:

* * * * *

(k) The procedures specified in paragraphs (k)(1) through (3) of this section shall be used to determine gross output for sources demonstrating compliance with the output-based standard under §§ 60.42Da(c), 60.43Da(i), 60.43Da(j), 60.44Da(d)(1), and 60.44Da(e).

* * * * *

(t) The owner or operator of an affected facility demonstrating compliance with the output-based emissions limitation under § 60.42Da(c)(1) shall install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section. An owner or operator of an affected facility demonstrating compliance with the input-based emission limitation in § 60.42Da(a)(1) or § 60.42Da(c)(2) may install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section.

(u) The owner or operator of an affected facility using a CEMS measuring CO emissions to meet requirements of this subpart shall meet the requirements specified in paragraphs (u)(1) through (4) of this section.

(1) You must monitor CO emissions using a CEMS according to the procedures specified in paragraphs (u)(1)(i) through (iv) of this section.

(i) The CO CEMS must be installed, certified, maintained, and operated according to the provisions in § 60.58b(i)(3) of subpart Eb of this part.

(ii) Each 1-hour CO emissions average is calculated using the data points generated by the CO CEMS expressed in parts per million by volume corrected to 3 percent oxygen (dry basis).

(iii) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. The 1-hour averages are calculated using the data points required in § 60.13(h)(2).

(iv) Quarterly accuracy determinations and daily calibration drift tests for the CO CEMS must be performed in accordance with procedure 1 in appendix F of this part.

(2) You must calculate the 1-hour average CO emissions levels for each boiler operating day by multiplying the average hourly CO output concentration measured by the CO CEMS times the corresponding average hourly flue gas flow rate and divided by the corresponding average hourly useful energy output from the affected facility. The 24-hour average CO emission level is determined by calculating the arithmetic average of the hourly CO emission levels computed for each boiler operating day.

(3) You must evaluate the preceding 24-hour average CO emission level each boiler operating day excluding periods of affected facility startup, shutdown, or malfunction. If the 24-hour average CO emission level is greater than 1.4 lb/MWh, you must initiate investigation of the relevant equipment and control systems within 24 hours of the first discovery of the high emission incident and, take the appropriate corrective action as soon as practicable to adjust control settings or repair equipment to reduce the 24-hour average CO emission level to 1.4 lb/MWh or less.

(4) You must record the CO measurements and calculations performed according to paragraph (u)(3)

of this section and any corrective actions taken. The record of corrective action taken must include the date and time during which the 24-hour average CO emission level was greater than 1.4 lb/MWh, and the date, time, and description of the corrective action.

(v) The owner or operator of an affected facility using a CEMS measuring PM emissions to meet requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (v)(1) through (v)(4) of this section.

* * * * *

(2) During each PM correlation testing run of the CEMS required by Performance Specification 11 in appendix B of this part, PM and O_2 (or CO_2) data shall be collected concurrently (or within a 30- to 60-minute period) by both the CEMS and performance tests conducted using the following test methods.

(i) For PM, Method 5 or 5B of appendix A–3 of this part or Method 17 of appendix A–6 of this part shall be used; and

(ii) After July 1, 2010 or after Method 202 of appendix M of part 51 has been revised to minimize artifact measurement and notice of that change has been published in the **Federal Register**, whichever is later, for condensable PM emissions, Method 202 of appendix M of part 51 shall be used; and

(iii) For O_2 (or CO_2), Method 3A or 3B of appendix A–2 of this part, as applicable shall be used.

* * * * *

(4) After July 1, 2011, within 90 days after the date of completing each performance evaluation required by paragraph (v) of this section, the owner or operator of the affected facility must either submit the test data to EPA by successfully entering the data electronically into EPA's WebFIRE data base available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main* or mail a copy to: United States Environmental Protection Agency; Energy Strategies Group; 109 TW Alexander DR; Mail Code: D243–01; RTP, NC 27711.

(w) The owner or operator using a SO_2, NO_X, CO_2, and O_2 CEMS to meet the requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (w)(1) through (w)(5) of this section.

(1) Except as provided for under paragraphs (w)(2), (w)(3), and (w)(4) of this section, each SO_2, NO_X, CO_2, and O_2 CEMS required under paragraphs (b) through (d) of this section shall be installed, certified, and operated in accordance with the applicable procedures in Performance Specification 2 or 3 in appendix B to this part or according to the procedures in appendices A and B to part 75 of this chapter. Daily calibration drift assessments and quarterly accuracy determinations shall be done in accordance with Procedure 1 in appendix F to this part, and a data assessment report (DAR), prepared according to section 7 of Procedure 1 in appendix F to this part, shall be submitted with each compliance report required under § 60.51Da.

(2) As an alternative to meeting the requirements of paragraph (w)(1) of this section, an owner or operator may elect to implement the following alternative data accuracy assessment procedures. For all required CO_2 and O_2 CEMS and for SO_2 and NO_X CEMS with span values greater than or equal to 100 ppm, the daily calibration error test and calibration adjustment procedures described in sections 2.1.1 and 2.1.3 of appendix B to part 75 of this chapter may be followed instead of the CD assessment procedures in Procedure 1, section 4.1 of appendix F of this part. If this option is selected, the data validation and out-of-control provisions in sections 2.1.4 and 2.1.5 of appendix B to part 75 of this chapter shall be followed instead of the excessive CD and out-of-control criteria in Procedure 1, section 4.3 of appendix F to this part. For the purposes of data validation under this subpart, the excessive CD and out-of-control criteria in Procedure 1, section 4.3 of appendix F to this part shall apply to SO_2 and NO_X span values less than 100 ppm;

* * * * *

■ 12. Section 60.50Da is amended by revising paragraphs (e)(1) and (f) to read as follows:

§ 60.50Da Compliance determination procedures and methods.

* * * * *

(e) * * *

(1) For Method 5 or 5B of appendix A–3 of this part, Method 17 of appendix A–6 of this part may be used at facilities with or without wet FGD systems if the stack temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of sections 8.1 and 11.1 of Method 5B of appendix A–3 of this part may be used in Method 17 of appendix A–6 of this part only if it is used after wet FGD systems. Method 17 of appendix A–6 of this part shall not be used after wet FGD systems if the effluent is saturated or laden with water droplets.

* * * * *

(f) Electric utility combined cycle gas turbines that are not designed to burn fuels containing 50 percent (by heat input) or more solid derived fuel not meeting the definition of natural gas are performance tested for PM, SO_2, and NO_X using the procedures of Method 19 of appendix A–7 of this part. The SO_2 and NO_X emission rates calculations from the gas turbine used in Method 19 of appendix A–7 of this part are determined when the gas turbine is performance tested under subpart GG of this part. The potential uncontrolled PM emission rate from a gas turbine is defined as 17 ng/J (0.04 lb/MMBtu) heat input.

* * * * *

■ 13. Section 60.51Da is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 60.51Da Reporting requirements.

* * * * *

(b) * * *

(2) The average SO_2 and NO_X emission rates (ng/J, lb/MMBtu, or lb/MWh) for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the emission standards; and, description of corrective actions taken.

(3) For owners or operators of affected facilities complying with the percent reduction requirement, percent reduction of the potential combustion concentration of SO_2 for each 30 successive boiler operating days, ending with the last 30-day period in the quarter; reasons for non-compliance with the standard; and, description of corrective actions taken.

* * * * *

■ 14. Section 60.52Da is revised to read as follows:

§ 60.52Da Recordkeeping requirements.

(a) The owner or operator of an affected facility subject to the emissions limitations in § 60.45Da shall provide notifications in accordance with § 60.7(a) and shall maintain records of all information needed to demonstrate compliance including performance tests, monitoring data, fuel analyses, and calculations, consistent with the requirements of § 60.7(f).

(b) The owner or operator of an affected facility subject to the opacity limits in § 60.42Da(b) that elects to monitor emissions according to the requirements in § 60.49Da(a)(3) shall maintain records according to the requirements specified in paragraphs

(b)(1) through (3) of this section, as applicable to the visible emissions monitoring method used.

(1) For each performance test conducted using Method 9 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) Dates and time intervals of all opacity observation periods;

(ii) Name, affiliation, and copy of current visible emission reading certification for each visible emission observer participating in the performance test; and

(iii) Copies of all visible emission observer opacity field data sheets;

(2) For each performance test conducted using Method 22 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (b)(2)(i) through (iv) of this section.

(i) Dates and time intervals of all visible emissions observation periods;

(ii) Name and affiliation for each visible emission observer participating in the performance test;

(iii) Copies of all visible emission observer opacity field data sheets; and

(iv) Documentation of any adjustments made and the time the adjustments were completed to the affected facility operation by the owner or operator to demonstrate compliance with the applicable monitoring requirements.

(3) For each digital opacity compliance system, the owner or operator shall maintain records and submit reports according to the requirements specified in the site-specific monitoring plan approved by the Administrator.

Subpart Db—[Amended]

■ 15. Section 60.40b is amended by revising the first sentence of paragraph (i) to read as follows:

§ 60.40b Applicability and delegation of authority.

* * * * *

(i) Heat recovery steam generators that are associated with combined cycle gas turbines and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart.

* * *

* * * * *

■ 16. Section 60.41b is amended by revising the definitions of ''Coal,'' ''Distillate oil,'' ''Gaseous fuel,'' ''Gross output,'' ''Natural gas,'' ''Potential sulfur dioxide emission rate,'' ''Steam generating unit,'' and ''Very low sulfur oil'' to read as follows:

§ 60.41b Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal not meeting the definition of natural gas, coal-oil mixtures, coke oven gas, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

* * * * *

Distillate oil means fuel oils that contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oil numbers 1 and 2, as defined by the American Society of Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17) or diesel fuel oil numbers 1 and 2, as defined by the American Society for Testing and Materials in ASTM D975 (incorporated by reference, see § 60.17).

* * * * *

Gaseous fuel means any fuel that is a gas at ISO conditions. This includes, but is not limited to, natural gas and gasified coal (including coke oven gas).

Gross output means the gross useful work performed by the steam generated. For units generating only electricity, the gross useful work performed is the gross electrical output from the turbine/generator set. For cogeneration units, the gross useful work performed is the gross electrical or mechanical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output or to enhance the performance of the unit (*i.e.*, steam delivered to an industrial process).

* * * * *

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17); or

(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 34 and 43 megajoules (MJ) per dry standard cubic meter (910 and 1,150 Btu per dry standard cubic foot).

* * * * *

Potential sulfur dioxide emission rate means the theoretical SO_2 emissions (nanograms per joule (ng/J) or lb/MMBtu heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems. For gasified coal or oil that is desulfurized prior to combustion, the *Potential sulfur dioxide emission rate* is the theoretical SO_2 emissions (ng/J or lb/MMBtu heat input) that would result from combusting fuel in a cleaned state without using any post combustion emission control systems.

* * * * *

Steam generating unit means a device that combusts any fuel or byproduct/waste and produces steam or heats water or heats any heat transfer medium. This term includes any municipal-type solid waste incinerator with a heat recovery steam generating unit or any steam generating unit that combusts fuel and is part of a cogeneration system or a combined cycle system. This term does not include process heaters as they are defined in this subpart.

* * * * *

Very low sulfur oil means for units constructed, reconstructed, or modified on or before February 28, 2005, oil that contains no more than 0.5 weight percent sulfur or that, when combusted without SO_2 emission control, has a SO_2 emission rate equal to or less than 215 ng/J (0.5 lb/MMBtu) heat input. For units constructed, reconstructed, or modified after February 28, 2005 and not located in a noncontinental area, *very low sulfur oil* means oil that contains no more than 0.30 weight percent sulfur or that, when combusted without SO_2 emission control, has a SO_2 emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input. For units constructed, reconstructed, or modified after February 28, 2005 and located in a noncontinental area, *very low sulfur oil* means oil that contains no more than 0.5 weight percent sulfur or that, when combusted without SO_2 emission control, has a SO_2 emission rate equal to or less than 215 ng/J (0.50 lb/MMBtu) heat input.

■ 17. Section 60.42b is amended to read as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraph (b);

■ c. By revising paragraph (c);

■ d. By revising paragraph (d) introductory text; and

■ e. By revising paragraphs (k)(1), (k)(2), and (k)(3).

§ 60.42b Standard for sulfur dioxide (SO_2).

(a) Except as provided in paragraphs (b), (c), (d), or (j) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal or oil shall cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) or 10 percent (0.10) of the potential SO_2 emission rate (90 percent reduction) and the emission limit determined according to the following formula:

$$E_s = \frac{(K_a H_a + K_b H_b)}{(H_a + H_b)}$$

Where:

E_s = SO_2 emission limit, in ng/J or lb/MMBtu heat input;
K_a = 520 ng/J (or 1.2 lb/MMBtu);
K_b = 340 ng/J (or 0.80 lb/MMBtu);
H_a = Heat input from the combustion of coal, in J (MMBtu); and
H_b = Heat input from the combustion of oil, in J (MMBtu).

For facilities complying with the percent reduction standard, only the heat input supplied to the affected facility from the combustion of coal and oil is counted in this paragraph. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels or heat derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(b) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal refuse alone in a fluidized bed combustion steam generating unit shall cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) or 20 percent (0.20) of the potential SO_2 emission rate (80 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input. If coal or oil is fired with coal refuse, the affected facility is subject to paragraph (a) or (d) of this section, as applicable. For facilities complying with the percent reduction standard, only the heat input supplied to the affected facility from the combustion of coal and oil is counted in this paragraph. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels or heat derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(c) On and after the date on which the performance test is completed or is required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that combusts coal or oil, either alone or in combination with any other fuel, and that uses an emerging technology for the control of SO_2 emissions, shall cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 50 percent of the potential SO_2 emission rate (50 percent reduction) and that contain SO_2 in excess of the emission limit determined according to the following formula:

$$E_s = \frac{(K_c H_c + K_d H_d)}{(H_c + H_d)}$$

Where:

E_s = SO2 emission limit, in ng/J or lb/MM Btu heat input;
K_c = 260 ng/J (or 0.60 lb/MMBtu);
K_d = 170 ng/J (or 0.40 lb/MMBtu);
H_c = Heat input from the combustion of coal, in J (MMBtu); and
H_d = Heat input from the combustion of oil, in J (MMBtu).

For facilities complying with the percent reduction standard, only the heat input supplied to the affected facility from the combustion of coal and oil is counted in this paragraph. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels, or from the heat input derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(d) On and after the date on which the performance test is completed or required to be completed under § 60.8, whichever comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005 and listed in paragraphs (d)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/MMBtu) heat input if the affected facility combusts oil other than very low sulfur oil. Percent reduction requirements are not applicable to affected facilities under paragraphs (d)(1), (2), (3) or (4) of this section. For facilities complying with paragraphs (d)(1), (2), or (3) of this section, only the heat input supplied to the affected facility from the combustion of coal and oil is counted in this paragraph. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels or heat derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

* * * * *

(k)(1) Except as provided in paragraphs (k)(2), (k)(3), and (k)(4) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, natural gas, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 8 percent (0.08) of the potential SO_2 emission rate (92 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input. For facilities complying with the percent reduction standard and paragraph (k)(3) of this section, only the heat input supplied to the affected facility from the combustion of coal and oil is counted in paragraph (k) of this section. No credit is provided for the heat input to the affected facility from the combustion of natural gas, wood, municipal-type solid waste, or other fuels or heat derived from exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

(2) Units firing only very low sulfur oil, gaseous fuel, a mixture of these fuels, or a mixture of these fuels with any other fuels with a potential SO_2 emission rate of 140 ng/J (0.32 lb/MMBtu) heat input or less are exempt from the SO_2 emissions limit in paragraph (k)(1) of this section.

(3) Units that are located in a noncontinental area and that combust coal, oil, or natural gas shall not discharge any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 215 ng/J (0.50 lb/MMBtu) heat input if the affected facility combusts oil or natural gas.

* * * * *

■ 18. Section 60.43b is amended to read as follows:

■ a. By revising paragraph (f);

■ b. By revising paragraph (g); and

■ c. By revising paragraphs (h)(1) and (h)(5) and adding paragraph (h)(6).

§ 60.43b Standard for particulate matter (PM).

* * * * *

(f) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that can combust coal, oil, wood, or mixtures of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. Owners and operators of an affected facility that elect to install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring PM emissions according to the requirements of this subpart and are subject to a federally enforceable PM limit of 0.030 lb/MMBtu or less are exempt from the opacity standard specified in this paragraph.

(g) The PM and opacity standards apply at all times, except during periods of startup, shutdown, or malfunction.

(h)(1) Except as provided in paragraphs (h)(2), (h)(3), (h)(4), (h)(5), and (h)(6) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of 13 ng/J (0.030 lb/MMBtu) heat input,

* * * * *

(5) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, an owner or operator of an affected facility not located in a noncontinental area that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.30 weight percent sulfur, coke oven gas, a mixture of these fuels, or either fuel (or a mixture of these fuels) in combination with other fuels not subject to a PM standard in § 60.43b and not using a post-combustion technology (except a wet scrubber) to reduce SO_2 or PM emissions is not subject to the PM limits in (h)(1) of this section.

(6) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, an owner or operator of an affected facility located in a noncontinental area that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.5 weight percent sulfur, coke oven gas, a mixture of these fuels, or either fuel (or a mixture of these fuels) in combination with other fuels not subject to a PM standard in § 60.43b and not using a post-combustion technology (except a wet scrubber) to reduce SO_2 or PM emissions is not subject to the PM limits in (h)(1) of this section.

■ 19. Section 60.44b is amended by revising paragraph (l)(1) to read as follows:

§ 60.44b Standard for nitrogen oxides (NO_X).

* * * * *

(l) * * *

(1) If the affected facility combusts coal, oil, natural gas, a mixture of these fuels, or a mixture of these fuels with any other fuels: A limit of 86 ng/J (0.20 lb/MMBtu) heat input unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, and natural gas; or

* * * * *

■ 20. Section 60.45b is amended to read as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraphs (c)(2)(i), (c)(4) introductory text, and (c)(5);

■ c. By revising paragraph (d) introductory text;

■ d. By revising paragraph (j); and

■ e. By revising paragraph (k).

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

(a) The SO_2 emission standards in § 60.42b apply at all times. Facilities burning coke oven gas alone or in combination with any other gaseous fuels or distillate oil are allowed to exceed the limit 30 operating days per calendar year for SO_2 control system maintenance.

* * * * *

(c) * * *

(2) * * *

(i) The procedures in Method 19 of appendix A–7 of this part are used to determine the hourly SO_2 emission rate (E_{ho}) and the 30-day average emission rate (E_{ao}). The hourly averages used to compute the 30-day averages are obtained from the CEMS of § 60.47b(a) or (b).

* * * * *

(4) The owner or operator of an affected facility subject to paragraph (c)(3) of this section does not have to measure parameters E_w or X_k if the owner or operator elects to assume that X_k= 1.0. Owners or operators of affected facilities who assume X_k = 1.0 shall:

* * * * *

(5) The owner or operator of an affected facility that qualifies under the provisions of § 60.42b(d) does not have to measure parameters E_w or X_k in paragraph (c)(3) of this section if the owner or operator of the affected facility elects to measure SO_2 emission rates of the coal or oil following the fuel sampling and analysis procedures in Method 19 of appendix A–7 of this part.

(d) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility that combusts only very low sulfur oil, natural gas, or a mixture of these fuels, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for oil of 10 percent (0.10) or less shall:

* * * * *

(j) The owner or operator of an affected facility that only combusts very low sulfur oil, natural gas, or a mixture of these fuels with any other fuels not subject to an SO_2 standard is not subject to the compliance and performance testing requirements of this section if the owner or operator obtains fuel receipts as described in § 60.49b(r).

(k) The owner or operator of an affected facility seeking to demonstrate compliance in §§ 60.42b(d)(4), 60.42b(j), 60.42b(k)(2), and 60.42b(k)(3) (when not burning coal) shall follow the applicable procedures in § 60.49b(r).

■ 21. Section 60.46b is amended to read as follows:

■ a. By revising paragraphs (d)(1) and (d)(2)(ii);

■ b. By revising paragraphs (e)(2) and (e)(4);

■ c. By revising paragraph (g);

■ d. By revising paragraph (i); and

■ e. By revising paragraphs (j) introductory text and (j)(11) and adding paragraph (j)(14).

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(d) * * *

(1) Method 3A or 3B of appendix A–2 of this part is used for gas analysis when applying Method 5 of appendix

A–3 of this part or Method 17 of appendix A–6 of this part.

(2) * * *

(ii) Method 17 of appendix A–6 of this part may be used at facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (320 °F). The procedures of sections 8.1 and 11.1 of Method 5B of appendix A–3 of this part may be used in Method 17 of appendix A–6 of this part only if it is used after a wet FGD system. Do not use Method 17 of appendix A–6 of this part after wet FGD systems if the effluent is saturated or laden with water droplets.

* * * * *

(e) * * *

(2) Following the date on which the initial performance test is completed or is required to be completed in § 60.8, whichever date comes first, the owner or operator of an affected facility which combusts coal (except as specified under § 60.46b(e)(4)) or which combusts residual oil having a nitrogen content greater than 0.30 weight percent shall determine compliance with the NO_X emission standards in § 60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated for each steam generating unit operating day as the average of all of the hourly NO_X emission data for the preceding 30 steam generating unit operating days.

* * * * *

(4) Following the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an affected facility that has a heat input capacity of 73 MW (250 MMBtu/hr) or less and that combusts natural gas, distillate oil, gasified coal, or residual oil having a nitrogen content of 0.30 weight percent or less shall upon request determine compliance with the NO_X standards in § 60.44b through the use of a 30-day performance test. During periods when performance tests are not requested, NO_X emissions data collected pursuant to § 60.48b(g)(1) or § 60.48b(g)(2) are used to calculate a 30-day rolling average emission rate on a daily basis and used to prepare excess emission reports, but will not be used to determine compliance with the NO_X emission standards. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly NO_X emission data for the preceding 30 steam generating unit operating days.

* * * * *

(g) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall demonstrate the maximum heat input capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. The owner or operator of an affected facility shall determine the maximum heat input capacity using the heat loss method or the heat input method described in sections 5 and 7.3 of the ASME *Power Test Codes* 4.1 (incorporated by reference, see § 60.17). This demonstration of maximum heat input capacity shall be made during the initial performance test for affected facilities that meet the criteria of § 60.44b(j). It shall be made within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of each facility, for affected facilities meeting the criteria of § 60.44b(k). Subsequent demonstrations may be required by the Administrator at any other time. If this demonstration indicates that the maximum heat input capacity of the affected facility is less than that stated by the manufacturer of the affected facility, the maximum heat input capacity determined during this demonstration shall be used to determine the capacity utilization rate for the affected facility. Otherwise, the maximum heat input capacity provided by the manufacturer is used.

* * * * *

(i) The owner or operator of an affected facility seeking to demonstrate compliance with the PM limit in paragraphs § 60.43b(a)(4) or § 60.43b(h)(5) shall follow the applicable procedures in § 60.49b(r).

(j) In place of PM testing with Method 5 or 5B of appendix A–3 of this part, or Method 17 of appendix A–6 of this part, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring PM emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor PM emissions instead of conducting performance testing using Method 5 or 5B of appendix A–3 of this part or Method 17 of appendix A–6 of this part shall comply with the requirements specified in paragraphs (j)(1) through (j)(14) of this section.

* * * * *

(11) During the correlation testing runs of the CEMS required by Performance Specification 11 in appendix B of this part, PM and O_2 (or CO_2) data shall be collected concurrently (or within a 30-to 60-minute period) by both the continuous emission monitors and performance tests conducted using the following test methods.

(i) For PM, Method 5 or 5B of appendix A–3 of this part or Method 17 of appendix A–6 of this part shall be used; and

(ii) After July 1, 2010 or after Method 202 of appendix M of part 51 has been revised to minimize artifact measurement and notice of that change has been published in the **Federal Register**, whichever is later, for condensable PM emissions, Method 202 of appendix M of part 51 shall be used; and

(iii) For O_2 (or CO_2), Method 3A or 3B of appendix A–2 of this part, as applicable shall be used.

* * * * *

(14) After July 1, 2011, within 90 days after completing a correlation testing run, the owner or operator of an affected facility shall either successfully enter the test data into EPA's WebFIRE data base located at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main* or mail a copy to: United States Environmental Protection Agency; Energy Strategies Group; 109 TW Alexander DR; Mail Code: D243–01; RTP, NC 27711.

* * * * *

■ 22. Section 60.47b is amended by revising the first sentence of paragraph (a) introductory text and the first sentence of paragraph (e)(4)(i) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraphs (b) and (f) of this section, the owner or operator of an affected facility subject to the SO_2 standards in § 60.42b shall install, calibrate, maintain, and operate CEMS for measuring SO_2 concentrations and either O_2 or CO_2 concentrations and shall record the output of the systems. * * *

* * * * *

(e) * * *

(4) * * *

(i) For all required CO_2 and O_2 monitors and for SO_2 and NO_X monitors with span values greater than or equal to 100 ppm, the daily calibration error test and calibration adjustment procedures described in sections 2.1.1 and 2.1.3 of appendix B to part 75 of this chapter may be followed instead of the CD assessment procedures in Procedure 1, section 4.1 of appendix F to this part. * * *

* * * * *

■ 23. Section 60.48b is amended to read as follows:

■ a. By revising paragraph (a);
■ b. By revising paragraph (e)(1);
■ c. By revising paragraph (g) introductory text;
■ d. By revising paragraph (h);
■ e. By revising paragraphs (j) introductory text, the last sentence of (j)(4) introductory text, (j)(4)(i)(C), (j)(5) and adding (j)(6); and
■ f. By revising the first sentence of paragraph (k).

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

(a) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a continuous opacity monitoring systems (COMS) for measuring the opacity of emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard under § 60.43b and meeting the conditions under paragraphs (j)(1), (2), (3), (4), or (5) of this section who elects not to install a COMS shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43b and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. If during the initial 60 minutes of observation all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent, the observation period may be reduced from 3 hours to 60 minutes.

(1) Except as provided in paragraph (a)(2) and (a)(3) of this section, the owner or operator shall conduct subsequent Method 9 of appendix A–4 of this part performance tests using the procedures in paragraph (a) of this section according to the applicable schedule in paragraphs (a)(1)(i) through (a)(1)(iv) of this section, as determined by the most recent Method 9 of appendix A–4 of this part performance test results.

(i) If no visible emissions are observed, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 12 calendar months from the date that the most recent performance test was conducted;

(ii) If visible emissions are observed but the maximum 6-minute average opacity is less than or equal to 5 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 6 calendar months from the date that the most recent performance test was conducted;

(iii) If the maximum 6-minute average opacity is greater than 5 percent but less than or equal to 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 3 calendar months from the date that the most recent performance test was conducted; or

(iv) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 30 calendar days from the date that the most recent performance test was conducted.

(2) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 of this part performance tests, elect to perform subsequent monitoring using Method 22 of appendix A–7 of this part according to the procedures specified in paragraphs (a)(2)(i) and (ii) of this section.

(i) The owner or operator shall conduct 10 minute observations (during normal operation) each operating day the affected facility fires fuel for which an opacity standard is applicable using Method 22 of appendix A–7 of this part and demonstrate that the sum of the occurrences of any visible emissions is not in excess of 5 percent of the observation period (*i.e.*, 30 seconds per 10 minute period). If the sum of the occurrence of any visible emissions is greater than 30 seconds during the initial 10 minute observation, immediately conduct a 30 minute observation. If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.*, 90 seconds per 30 minute period) the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.*, 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures in paragraph (a) of this section within 30 calendar days according to the requirements in § 60.46d(d)(7).

(ii) If no visible emissions are observed for 30 operating days during which an opacity standard is applicable, observations can be reduced to once every 7 operating days during which an opacity standard is applicable. If any visible emissions are observed, daily observations shall be resumed.

(3) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 performance tests, elect to perform subsequent monitoring using a digital opacity compliance system according to a site-specific monitoring plan approved by the Administrator. The observations shall be similar, but not necessarily identical, to the requirements in paragraph (a)(2) of this section. For reference purposes in preparing the monitoring plan, see OAQPS ''Determination of Visible Emission Opacity from Stationary Sources Using Computer-Based Photographic Analysis Systems.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality and Planning Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Preliminary Methods.

* * * * *

(e) * * *

(1) For affected facilities combusting coal, wood or municipal-type solid waste, the span value for a COMS shall be between 60 and 80 percent.

* * * * *

(g) The owner or operator of an affected facility that has a heat input capacity of 73 MW (250 MMBtu/hr) or less, and that has an annual capacity factor for residual oil having a nitrogen content of 0.30 weight percent or less, natural gas, distillate oil, gasified coal, or any mixture of these fuels, greater than 10 percent (0.10) shall:

* * * * *

(h) The owner or operator of a duct burner, as described in § 60.41b, that is subject to the NO_X standards in § 60.44b(a)(4), § 60.44b(e), or § 60.44b(l) is not required to install or operate a continuous emissions monitoring system to measure NO_X emissions.

* * * * *

(j) The owner or operator of an affected facility that meets the conditions in either paragraph (j)(1), (2), (3), (4), (5), or (6) of this section is not required to install or operate a COMS if:

* * * * *

(4) * * * Owners and operators of affected facilities electing to comply with this paragraph must demonstrate compliance according to the procedures specified in paragraphs (j)(4)(i) through (iv) of this section; or

(i) * * *

(C) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. The 1-hour averages are calculated using the data points required in § 60.13(h)(2).

* * * * *

(5) The affected facility uses a bag leak detection system to monitor the performance of a fabric filter (baghouse) according to the most recent requirements in section § 60.48Da of this part; or

(6) The affected facility burns only gaseous fuels or fuel oils that contain less than or equal to 0.30 weight percent sulfur and operates according to a written site-specific monitoring plan approved by the permitting authority. This monitoring plan must include procedures and criteria for establishing and monitoring specific parameters for the affected facility indicative of compliance with the opacity standard.

(k) Owners or operators complying with the PM emission limit by using a PM CEMS must calibrate, maintain, operate, and record the output of the system for PM emissions discharged to the atmosphere as specified in § 60.46b(j). * * *

■ 24. Section 60.49b is amended to read as follows:

■ a. By revising paragraphs (c) introductory text and (c)(3);

■ b. By revising paragraph (d);

■ c. By revising paragraph (f);

■ d. By revising paragraph (h)(1) and (h)(2)(i);

■ e. By revising paragraph (k)(2);

■ f. By revising paragraph (m) introductory text; and

■ g. By revising paragraph (r)(1).

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(c) The owner or operator of each affected facility subject to the NO_X standard in § 60.44b who seeks to demonstrate compliance with those standards through the monitoring of steam generating unit operating conditions in the provisions of § 60.48b(g)(2) shall submit to the Administrator for approval a plan that identifies the operating conditions to be monitored in § 60.48b(g)(2) and the records to be maintained in § 60.49b(g). This plan shall be submitted to the Administrator for approval within 360 days of the initial startup of the affected facility. An affected facility burning coke oven gas alone or in combination with other gaseous fuels or distillate oil shall submit this plan to the Administrator for approval within 360 days of the initial startup of the affected facility or by November 30, 2009, whichever date comes later. If the plan is approved, the owner or operator shall maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan. The plan shall:

* * * * *

(3) Identify how these operating conditions, including steam generating unit load, will be monitored under § 60.48b(g) on an hourly basis by the owner or operator during the period of operation of the affected facility; the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating conditions will be representative and accurate; and the type and format of the records of these operating conditions, including steam generating unit load, that will be maintained by the owner or operator under § 60.49b(g).

(d) Except as provided in paragraph (d)(2) of this section, the owner or operator of an affected facility shall record and maintain records as specified in paragraph (d)(1) of this section.

(1) The owner or operator of an affected facility shall record and maintain records of the amounts of each fuel combusted during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for the reporting period. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of each calendar month.

(2) As an alternative to meeting the requirements of paragraph (d)(1) of this section, the owner or operator of an affected facility that is subject to a federally enforceable permit restricting fuel use to a single fuel such that the facility is not required to continuously monitor any emissions (excluding opacity) or parameters indicative of emissions may elect to record and maintain records of the amount of each fuel combusted during each calendar month.

* * * * *

(f) For an affected facility subject to the opacity standard in § 60.43b, the owner or operator shall maintain records of opacity. In addition, an owner or operator that elects to monitor emissions according to the requirements in § 60.48b(a) shall maintain records according to the requirements specified in paragraphs (f)(1) through (3) of this section, as applicable to the visible emissions monitoring method used.

(1) For each performance test conducted using Method 9 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (f)(1)(i) through (iii) of this section.

(i) Dates and time intervals of all opacity observation periods;

(ii) Name, affiliation, and copy of current visible emission reading certification for each visible emission observer participating in the performance test; and

(iii) Copies of all visible emission observer opacity field data sheets;

(2) For each performance test conducted using Method 22 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (f)(2)(i) through (iv) of this section.

(i) Dates and time intervals of all visible emissions observation periods;

(ii) Name and affiliation for each visible emission observer participating in the performance test;

(iii) Copies of all visible emission observer opacity field data sheets; and

(iv) Documentation of any adjustments made and the time the adjustments were completed to the affected facility operation by the owner or operator to demonstrate compliance with the applicable monitoring requirements.

(3) For each digital opacity compliance system, the owner or operator shall maintain records and submit reports according to the requirements specified in the site-specific monitoring plan approved by the Administrator.

* * * * *

(h) * * *

(1) Any affected facility subject to the opacity standards in § 60.43b(f) or to the operating parameter monitoring requirements in § 60.13(i)(1).

(2) * * *

(i) Combusts natural gas, distillate oil, gasified coal, or residual oil with a nitrogen content of 0.3 weight percent or less; or

* * * * *

(k) * * *

(2) Each 30-day average SO_2 emission rate (ng/J or lb/MMBtu heat input) measured during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken; For an exceedance due to maintenance of the SO_2 control system covered in paragraph 60.45b(a), the report shall identify the days on which the

maintenance was performed and a description of the maintenance;

* * * * *

(m) For each affected facility subject to the SO_2 standards in § 60.42(b) for which the minimum amount of data required in § 60.47b(c) were not obtained during the reporting period, the following information is reported to the Administrator in addition to that required under paragraph (k) of this section:

* * * * *

(r) * * *

(1) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil, natural gas, wood, a mixture of these fuels, or any of these fuels (or a mixture of these fuels) in combination with other fuels that are known to contain an insignificant amount of sulfur in § 60.42b(j) or § 60.42b(k) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier that certify that the oil meets the definition of distillate oil and gaseous fuel meets the definition of natural gas as defined in § 60.41b and the applicable sulfur limit. For the purposes of this section, the distillate oil need not meet the fuel nitrogen content specification in the definition of distillate oil. Reports shall be submitted to the Administrator certifying that only very low sulfur oil meeting this definition, natural gas, wood, and/or other fuels that are known to contain insignificant amounts of sulfur were combusted in the affected facility during the reporting period; or

* * * * *

Subpart Dc—[Amended]

■ 25. Section 60.40c is amended to read as follows:

■ a. By revising paragraph (a);

■ b. By revising the first sentence of paragraph (e);

■ c. By revising paragraph (f); and

■ d. By revising paragraph (g).

§ 60.40c Applicability and delegation of authority.

(a) Except as provided in paragraphs (d), (e), (f), and (g) of this section, the affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)) or less, but greater than or equal to 2.9 MW (10 MMBtu/hr).

* * * * *

(e) Heat recovery steam generators that are associated with combined cycle gas turbines and meet the applicability requirements of subpart KKKK of this part are not subject to this subpart.

* * *

(f) Any facility covered by subpart AAAA of this part is not subject by this subpart.

(g) Any facility covered by an EPA approved State or Federal section 111(d)/129 plan implementing subpart BBBB of this part is not subject by this subpart.

■ 26. Section 60.41c is amended by revising the definitions of ''Coal,'' ''Distillate oil,'' ''Natural gas,'' and ''Steam generating unit'' to read as follows:

§ 60.41c Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels derived from coal for the purposes of creating useful heat, including but not limited to solvent refined coal, gasified coal not meeting the definition of natural gas, coal-oil mixtures, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

* * * * *

Distillate oil means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17) or diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975 (incorporated by reference, see § 60.17).

* * * * *

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17); or

(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 34 and 43 megajoules (MJ) per dry standard cubic meter (910 and 1,150 Btu per dry standard cubic foot).

* * * * *

Steam generating unit means a device that combusts any fuel and produces steam or heats water or heats any heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in this subpart.

* * * * *

■ 27. Section 60.42c is amended by revising paragraphs (e)(2) and (j) to read as follows:

§ 60.42c Standard for sulfur dioxide (SO_2).

* * * * *

(e) * * *

(2) The emission limit determined according to the following formula for any affected facility that combusts coal, oil, or coal and oil with any other fuel:

$$E_s = \frac{(K_a H_a + K_b H_b + K_c H_c)}{(H_a + H_b + H_c)}$$

Where:

E_s = SO_2 emission limit, expressed in ng/J or lb/MMBtu heat input;

K_a = 520 ng/J (1.2 lb/MMBtu);

K_b = 260 ng/J (0.60 lb/MMBtu);

K_c = 215 ng/J (0.50 lb/MMBtu);

H_a = Heat input from the combustion of coal, except coal combusted in an affected facility subject to paragraph (b)(2) of this section, in Joules (J) [MMBtu];

H_b = Heat input from the combustion of coal in an affected facility subject to paragraph (b)(2) of this section, in J (MMBtu); and

H_c = Heat input from the combustion of oil, in J (MMBtu).

* * * * *

(j) For affected facilities located in noncontinental areas and affected facilities complying with the percent reduction standard, only the heat input supplied to the affected facility from the

combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from wood or other fuels or for heat derived from exhaust gases from other sources, such as stationary gas turbines, internal combustion engines, and kilns.

■ 28. Section 60.43c is amended by revising paragraph (c) to read as follows:

§ 60.43c Standard for particulate matter (PM).

* * * * *

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that can combust coal, wood, or oil and has a heat input capacity of 8.7 MW (30 MMBtu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. Owners and operators of an affected facility that elect to install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring PM emissions according to the requirements of this subpart and are subject to a federally enforceable PM limit of 0.030 lb/MMBtu or less are exempt from the opacity standard specified in this paragraph.

* * * * *

■ 29. Section 60.44c is amended by revising paragraph (h) to read as follows:

§ 60.44c Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(h) For affected facilities subject to § 60.42c(h)(1), (2), or (3) where the owner or operator seeks to demonstrate compliance with the SO_2 standards based on fuel supplier certification, the performance test shall consist of the certification from the fuel supplier, as described in § 60.48c(f), as applicable.

* * * * *

■ 30. Section 60.45c is amended to read as follows:

■ a. By revising paragraphs (a)(2) and (a)(8);

■ b. By revising paragraphs (c) introductory text, (c)(7) introductory text, (c)(8), (c)(9), and (c)(11), and by adding paragraph (c)(14).

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

(a) * * *

(2) Method 3A or 3B of appendix A–2 of this part shall be used for gas analysis when applying Method 5 or 5B of appendix A–3 of this part or 17 of appendix A–6 of this part.

* * * * *

(8) Method 9 of appendix A–4 of this part shall be used for determining the opacity of stack emissions.

* * * * *

(c) In place of PM testing with Method 5 or 5B of appendix A–3 of this part or Method 17 of appendix A–6 of this part, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring PM emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor PM emissions instead of conducting performance testing using Method 5 or 5B of appendix A–3 of this part or Method 17 of appendix A–6 of this part shall install, calibrate, maintain, and operate a CEMS and shall comply with the requirements specified in paragraphs (c)(1) through (c)(14) of this section.

* * * * *

(7) At a minimum, valid CEMS hourly averages shall be obtained as specified in paragraph (c)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

* * * * *

(8) The 1-hour arithmetic averages required under paragraph (c)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (c)(7) of this section are not met.

* * * * *

(11) During the correlation testing runs of the CEMS required by Performance Specification 11 in appendix B of this part, PM and O_2 (or CO_2) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and performance tests conducted using the following test methods.

(i) For PM, Method 5 or 5B of appendix A–3 of this part or Method 17 of appendix A–6 of this part shall be used; and

(ii) After July 1, 2010 or after Method 202 of appendix M of part 51 has been revised to minimize artifact measurement and notice of that change has been published in the **Federal Register**, whichever is later, for condensable PM emissions, Method 202 of appendix M of part 51 shall be used; and

(iii) For O2 (or CO_2), Method 3A or 3B of appendix A–2 of this part, as applicable shall be used.

* * * * *

(14) After July 1, 2011, within 90 days after the date of completing each performance evaluation required by paragraph (c)(11) of this section, the owner or operator of the affected facility must either submit the test data to EPA by successfully entering the data electronically into EPA's WebFIRE data base available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main* or mail a copy to: United States Environmental Protection Agency; Energy Strategies Group; 109 TW Alexander DR; Mail Code: D243–01; RTP, NC 27711.

* * * * *

■ 31. Section 60.47c is amended to read as follows:

■ a. By revising paragraph (a);

■ b. By revising paragraph (b);

■ c. By revising paragraph (c);

■ d. By revising paragraph (d);

■ e. By revising paragraphs (e) introductory text and (e)(1)(iii);

■ f. By revising paragraph (f); and

■ g. By adding paragraph (g).

§ 60.47c Emission monitoring for particulate matter.

(a) Except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, the owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard in § 60.43c(c) and that is not required to install a COMS due to paragraphs (c), (d), (e), or (f) of this section that elects not to install a COMS shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43c and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. If during the initial 60 minutes of observation all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent, the observation period may be reduced from 3 hours to 60 minutes.

(1) Except as provided in paragraph (a)(2) and (a)(3) of this section, the owner or operator shall conduct subsequent Method 9 of appendix A–4 of this part performance tests using the procedures in paragraph (a) of this section according to the applicable schedule in paragraphs (a)(1)(i) through (a)(1)(iv) of this section, as determined by the most recent Method 9 of appendix A–4 of this part performance test results.

(i) If no visible emissions are observed, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 12 calendar months from the date that the most recent performance test was conducted;

(ii) If visible emissions are observed but the maximum 6-minute average opacity is less than or equal to 5 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 6 calendar months from the date that the most recent performance test was conducted;

(iii) If the maximum 6-minute average opacity is greater than 5 percent but less than or equal to 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 3 calendar months from the date that the most recent performance test was conducted; or

(iv) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 30 calendar days from the date that the most recent performance test was conducted.

(2) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 of this part performance tests, elect to perform subsequent monitoring using Method 22 of appendix A–7 of this part according to the procedures specified in paragraphs (a)(2)(i) and (ii) of this section.

(i) The owner or operator shall conduct 10 minute observations (during normal operation) each operating day the affected facility fires fuel for which an opacity standard is applicable using Method 22 of appendix A–7 of this part and demonstrate that the sum of the occurrences of any visible emissions is not in excess of 5 percent of the observation period (*i.e.* , 30 seconds per 10 minute period). If the sum of the occurrence of any visible emissions is greater than 30 seconds during the initial 10 minute observation, immediately conduct a 30 minute observation. If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.* , 90 seconds per 30 minute period) the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.* , 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures in paragraph (a) of this section within 30 calendar days according to the requirements in § 60.45c(a)(8).

(ii) If no visible emissions are observed for 30 operating days during which an opacity standard is applicable, observations can be reduced to once every 7 operating days during which an opacity standard is applicable. If any visible emissions are observed, daily observations shall be resumed.

(3) If the maximum 6-minute opacity is less than 10 percent during the most recent Method 9 of appendix A–4 of this part performance test, the owner or operator may, as an alternative to performing subsequent Method 9 of appendix A–4 performance tests, elect to perform subsequent monitoring using a digital opacity compliance system according to a site-specific monitoring plan approved by the Administrator. The observations shall be similar, but not necessarily identical, to the requirements in paragraph (a)(2) of this section. For reference purposes in preparing the monitoring plan, see OAQPS ''Determination of Visible Emission Opacity from Stationary Sources Using Computer-Based Photographic Analysis Systems.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality and Planning Standards; Sector Policies and Programs Division; Measurement Policy Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Preliminary Methods.

(b) All COMS shall be operated in accordance with the applicable procedures under Performance Specification 1 of appendix B of this part. The span value of the opacity COMS shall be between 60 and 80 percent.

(c) Owners and operators of an affected facilities that burn only distillate oil that contains no more than 0.5 weight percent sulfur and/or liquid or gaseous fuels with potential sulfur dioxide emission rates of 26 ng/J (0.060 lb/MMBtu) heat input or less and that do not use a post-combustion technology to reduce SO2 or PM emissions and that are subject to an opacity standard in § 60.43c(c) are not required to operate a COMS if they follow the applicable procedures in § 60.48c(f).

(d) Owners or operators complying with the PM emission limit by using a PM CEMS must calibrate, maintain, operate, and record the output of the system for PM emissions discharged to the atmosphere as specified in § 60.45c(c). The CEMS specified in paragraph § 60.45c(c) shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

(e) Owners and operators of an affected facility that is subject to an opacity standard in § 60.43c(c) and that does not use post-combustion technology (except a wet scrubber) for reducing PM, SO_2, or carbon monoxide (CO) emissions, burns only gaseous fuels or fuel oils that contain less than or equal to 0.5 weight percent sulfur, and is operated such that emissions of CO discharged to the atmosphere from the affected facility are maintained at levels less than or equal to 0.15 lb/MMBtu on a boiler operating day average basis is not required to operate a COMS. Owners and operators of affected facilities electing to comply with this paragraph must demonstrate compliance according to the procedures specified in paragraphs (e)(1) through (4) of this section; or

(1) * * *

(iii) At a minimum, valid 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30-day rolling average basis. The 1-hour averages are calculated using the data points required in § 60.13(h)(2).

* * * * *

(f) Owners and operators of an affected facility that is subject to an opacity standard in § 60.43c(c) and that uses a bag leak detection system to monitor the performance of a fabric filter (baghouse) according to the most recent requirements in section § 60.48Da of this part is not required to operate a COMS.

(g) Owners and operators of an affected facility that is subject to an opacity standard in § 60.43c(c) and that burns only gaseous fuels or fuel oils that contain less than or equal to 0.5 weight percent sulfur and operates according to a written site-specific monitoring plan

approved by the permitting authority is not required to operate a COMS. This monitoring plan must include procedures and criteria for establishing and monitoring specific parameters for the affected facility indicative of compliance with the opacity standard.

■ 32. Section 60.48c is amended to read as follows:

■ a. By revising paragraph (c);

■ b. By revising paragraph (e)(11); and

■ c. By revising paragraphs (f)(1)(iii) and (f)(4)(ii).

§ 60.48c Reporting and recordkeeping requirements.

* * * * *

(c) In addition to the applicable requirements in § 60.7, the owner or operator of an affected facility subject to the opacity limits in § 60.43c(c) shall submit excess emission reports for any excess emissions from the affected facility that occur during the reporting period and maintain records according to the requirements specified in paragraphs (c)(1) through (3) of this section, as applicable to the visible emissions monitoring method used.

(1) For each performance test conducted using Method 9 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) Dates and time intervals of all opacity observation periods;

(ii) Name, affiliation, and copy of current visible emission reading certification for each visible emission observer participating in the performance test; and

(iii) Copies of all visible emission observer opacity field data sheets;

(2) For each performance test conducted using Method 22 of appendix A–4 of this part, the owner or operator shall keep the records including the information specified in paragraphs (c)(2)(i) through (iv) of this section.

(i) Dates and time intervals of all visible emissions observation periods;

(ii) Name and affiliation for each visible emission observer participating in the performance test;

(iii) Copies of all visible emission observer opacity field data sheets; and

(iv) Documentation of any adjustments made and the time the adjustments were completed to the affected facility operation by the owner or operator to demonstrate compliance with the applicable monitoring requirements.

(3) For each digital opacity compliance system, the owner or operator shall maintain records and submit reports according to the requirements specified in the site-specific monitoring plan approved by the Administrator

* * * * *

(e) * * *

(11) If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), (3), or (4) of this section, as applicable. In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

(f) * * *

(1) * * *

(iii) The sulfur content or maximum sulfur content of the oil.

* * * * *

(4) * * *

(ii) The potential sulfur emissions rate or maximum potential sulfur emissions rate of the fuel in ng/J heat input; and

* * * * *

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S.J. Res. 3/P.L. 111–1

Ensuring that the compensation and other emoluments attached to the office of Secretary of the Interior are those which were in effect on January 1, 2005. (Jan. 16, 2009; 123 Stat. 3)

A cumulative List of Public Laws for the second session of the 110th Congress will be published in the **Federal Register** on January 30, 2009.

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